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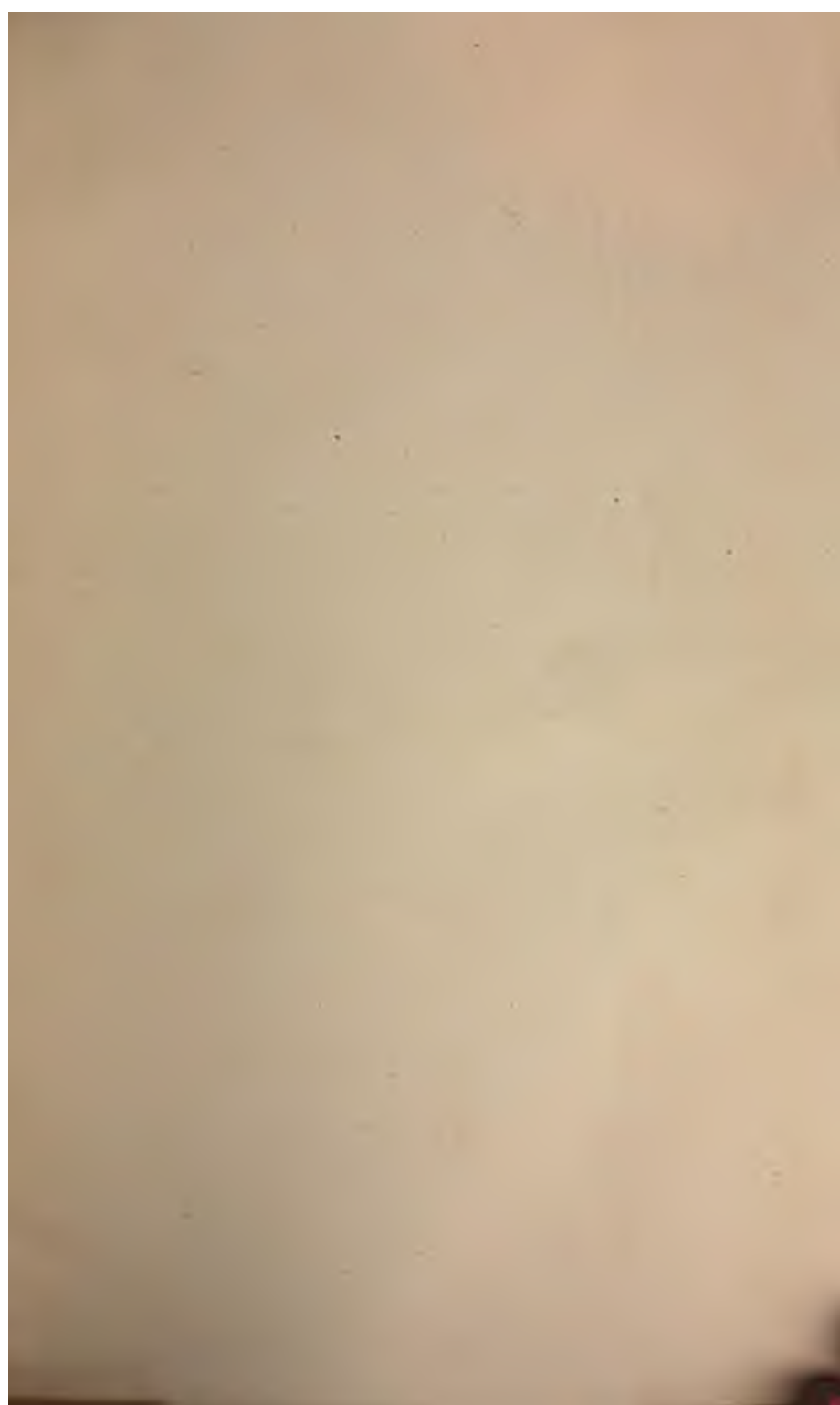
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THE
LAW OF RAILWAY COMPANIES,

COMPRISING

THE COMPANIES CLAUSES, THE LANDS CLAUSES,
THE RAILWAYS CLAUSES CONSOLIDATION ACTS,
THE RAILWAY COMPANIES ACT, 1867,
(WITH THE GENERAL ORDER AND RULES THEREON.)

AND THE

REGULATION OF RAILWAYS ACT, 1868;

WITH NOTES OF ALL THE CASES DECIDED ON THOSE ACTS.

AND

AN APPENDIX
CONTAINING ALL THE OTHER MATERIAL ACTS RELATING TO
RAILWAYS, AND THE STANDING ORDERS OF THE
HOUSES OF LORDS AND COMMONS.

By Edw. Sauer, Esq., &c.

BY

HENRY GODEFROI, OF LINCOLN'S INN,

AND

JOHN SHORTT, OF THE MIDDLE TEMPLE.

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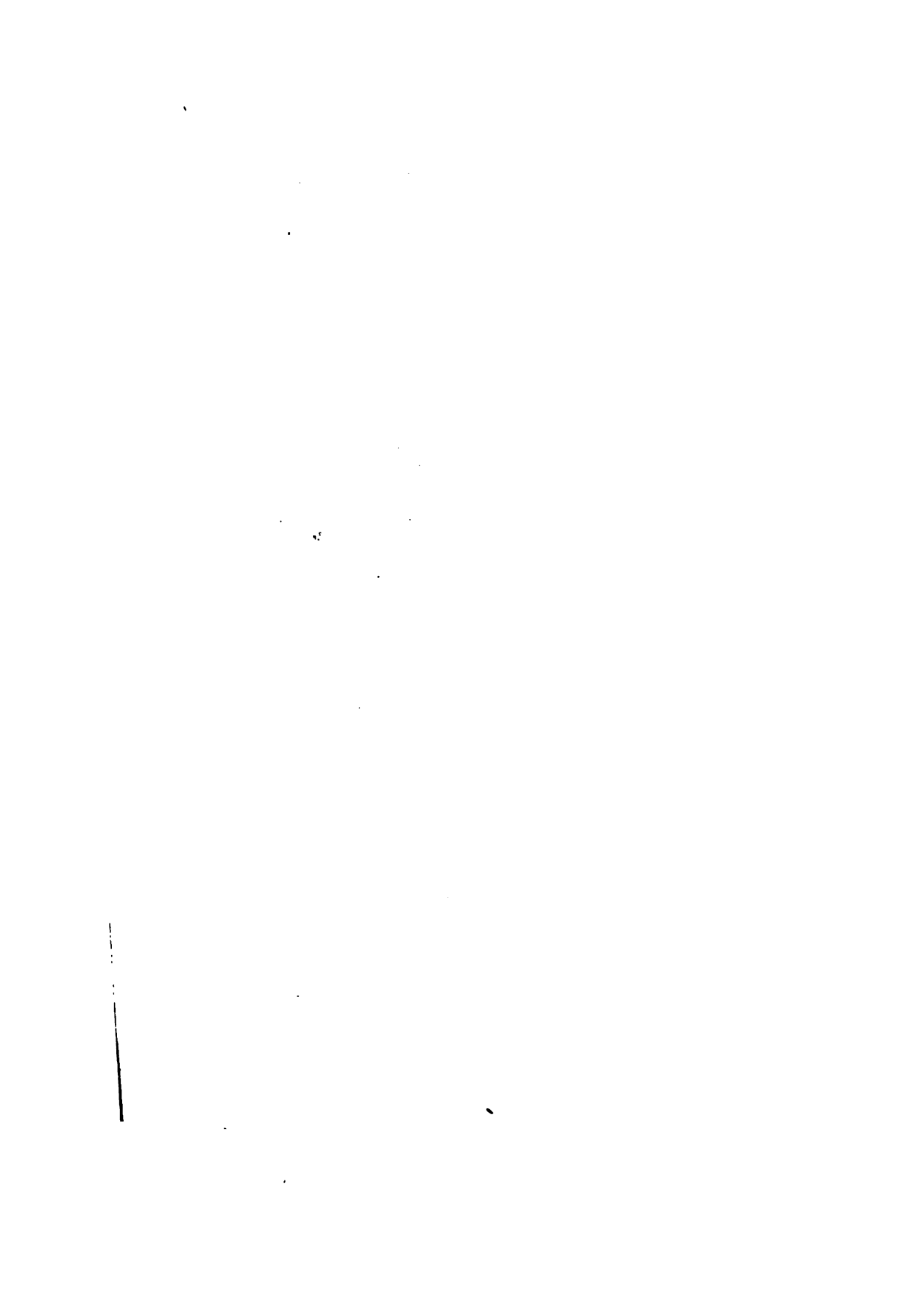
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WITH SENTIMENTS OF GREAT RESPECT,

DEDICATED

BY

THE AUTHORS.



P R E F A C E.

AN apology for the appearance of the present work, or for the form which it has assumed, is hardly deemed necessary by the Authors. The importance of the subjects treated of; the now almost unanimous opinion of the profession as to the form of legal writing most practically convenient for reference; the long time which has elapsed since a treatise of a similar nature has been published, and the great changes and additions which have in the meantime been made with regard to the law of railway companies, both by decision and by legislative enactment, afford reasons sufficient to justify the Authors' undertaking.

In the notes to the various sections of the acts of Parliament, the aim has been to express the result in point of law of all decided cases down to the end of last year* as concisely as possible, instead of wearying, and, as often happens, bewildering, the reader by long and complicated statements of facts. In this way the Authors hope to have been able to supply, within a moderate compass, a complete treatise on the Law relating to Railway Companies.

Those acts of Parliament which are of lesser importance, are printed separately, and in their chronological order, in the Appendix, but are referred to in several other portions of the work, and are included in the Index.

* Some cases decided since the beginning of this year will be found in the Addenda.

By making the Index as comprehensive as possible, the Authors trust that they have obviated any inconvenience that might otherwise result from the form of the book, or from the miscellaneous character of the subjects dealt with.

That their work will be found to contain various imperfections, the Authors cannot but expect; the occurrence of any serious inaccuracy has, it is hoped, been guarded against by the exercise of care and diligence. They respectfully submit the result of their labours to the consideration of the profession and of the public.

The Authors desire to acknowledge their obligations to Mr Edward Pennefather O'Brien, of the Inner Temple, for contributing the common law portion of the notes to the Companies Clauses Act, and some of the earlier sections of the Lands Clauses Act.

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[illegible]

ADDENDA ET CORRIGENDA.

- Page 6, line 17, for "29 Car. I. c. 3," read "29 Car. II. c. 3."
Page 11, line 45, and marginal note, for "Factory Act," read "Factors Act."
Page 12, note, line 1, for "Scotch Lands Clauses Act," read "Scotch Companies Clauses Act."
Page 16, line 35, margin, for "of," read "for."
Page 16, line 50, for "vondor," read "vendee."
Page 17, line 38, for "he," read "the transferee."
Page 19, line 21, for "J. 22 L," read "22 L. J."
Page 21, last line, for "members," read "executors."
Page 23, line 44, margin, for "lashes," read "laches."
Page 24, line 18, for "constitutes," read "constitute."
Page 31, line 10, *dele* "a bill," and after "filed," *dele* "by them," and *insert* "a bill."
Page 31, line 11, after "directors" *insert* "it."
Page 33, for "Scotch Lands Clauses," read "Scotch Companies Clauses."
Page 34, *insert*—"Where a railway company deposited with a bank a number of shares as security for an advance of money, the certificate on the face of it purporting that the shares were "registered as fully paid up in the books of the company;" and in the register of shareholders the names of the chairman and manager of the bank were inserted simply as holders of the shares, but in the call-book there was the following memorandum—'deposited at bank as security for overdraft;' it was held by the Court of Common Pleas upon a rule for a *sci. fa.* against the persons in whose names the shares were registered, that they were not liable; but as the petitioner desired to have the question raised upon the record, the Court allowed the *sci. fa.* to go, subject to a special case. (*Guest v. Worcestershire, &c., Railway Co.*, L. R. 4 C. P. 9.)"
Page 39, line 3, *insert*—"Where an action was brought against a railway company on behalf of the assignee of certain Lloyd's bonds given by that company, the company was held not entitled to rely as a defence on a private agreement, made by deed between them and the original obligor, that the obligor should pay the bonds as they became due, and all interest on them, and should indemnify the company against all losses, charges, damages, and expenses in respect of them. As the company had given the bonds for the purpose of raising money on them, they could not, after the bonds had been assigned for valuable consideration, set up as a defence a secret arrangement between themselves and the obligor, whereby they should be free from liability: (*Dickson v. Swansea Vale and Neath and Brecon Railway Co.*, L. R. 4 Q. B. 44; 38 L. J. Q. B. 17; 19 L. T. N. S. 346.)"
Page 42, line 26, for "9 Geo. III," read "9 Geo. II."
Page 48, line 21, before "registered" *insert* "have been."

Page 53 n. and 55 n., for "Scotch Lands Clauses," read "Scotch Companies Clauses."

Page 73, line 14 margin, for "redirection," read "reduction."

Page 80, last par. margin, for "leases," read "secus."

Page 84, line 37, after "property" insert "are valid."

Page 87, line 23, for "to," read "in."

Page 98, line 18, *dele* "company."

Page 98, line 21, after "to the," *dele* "general."

Page 165, line 34, for "as," read "on."

Page 167, under s. 24, insert "*Emmanuel Hospital v. Metropolitan District Railway Co.*, 3 W. N. 312."

Page 174, line 28, for "arbitration" read "arbitrators."

Page 196, at bottom of page, insert—"raising pavement or footway of a street above the level of the entrance to plaintiff's house, and rendering it necessary for him to make an access to his house by two steps descending from the pavement: (*Ferrar v. Commissioners of Sewers of the City of London*, 19 L. T. N. S. 185.)"

Page 198, before last paragraph, insert—"An arbitrator is justified in assessing a sum for damages to the goods on the claimant's premises as well as for structural injury and depreciation of the land: (*Knock v. Metropolitan Railway Co.*, 19 L. T. N. S. 239.)"

Page 199, line 40, for "are to," read "should."

Page 205, line 31, for "L. R. (Eq.)," read "L. R. 1 (Eq.)"

Page 207, line 4, for "engaged," read "employed."

Page 214, line 7, margin, for "arrest," read "assent."

Page 219, last par. margin, for "£2," read "£20."

Page 221, line 41, for "(15 & 16 Vict. c. 6)," read "(15 & 16 Vict. c. 51.)"

Page 225, Re *Phillips's Trusts* also reported L. R. 6 Eq. 250.

Page 230, lines 26, margin, and 46, for "appointment" read "apportionment."

Page 230, line 47, after "taken," *dele* "in."

Page 231, line 42, for "constitution," read "construction;" and for "appears," read "appeared."

Page 238, line 1, margin, for "remission," read "revision."

Page 251, add "*Emmanuel Hospital v. Metropolitan District Railway Co.*, W. N. 312."

Page 256, after last par., insert—"The Court will not, in a suit on the part of a landowner against a railway company for specific performance of an agreement to take lands, make a decree where there has been no investigation of title, but will refer it to chambers, to see whether a good title can be made: (*Gart v. East Gloucestershire Railway Co.*, 18 L. T. N. S. 8.)"

Page 257, line 14, for "209," read "ccix."

Page 270, line 34, for "c. 1, s. 6," read "c. 51."

Page 272, line 7, for "land" read "lord."

Page 288, line 49, for "given," read "gone."

Page 290, line 9, margin, for "recal," read "treat."

Page 296, s. cxxx., add—"In *Jones v. South Staffordshire Railway Co.*, 19 L. T. N. S. 603, the Court of Queen's Bench inclined to the opinion that by the arbitration mentioned in this section of the Lands Clauses Act, must be understood an ordinary arbitration, and not such an arbitration as is provided for by the earlier sections in the case of lands compulsorily taken by a company. An arbitration of the latter kind having taken place to determine the price of certain superfluous land, and an award having been made, the Court refused to grant a mandamus to compel the company to take up the award."

Page 306, line 31, for "(14 & 15 Vict. c. 78)," read "(14 & 15 Vict. c. 70)."

Page 330, line 32, margin, for "literal," read "lateral."

Page 359, line 41, see also *Taff Vale Railway Co. v. Davies*, 19 L. T. N. S. 279.

Page 382, line 4, for "petitioner's," read "plaintiffs."

Page 382, line 12, for "petitioner," read "plaintiff."

Page 415, line 13, insert—"When an unsuccessful application was made to a judge at chambers for an injunction to restrain a railway company from giving to other persons greater facilities than were accorded to the complainants, and the judge ordered that the complainants should pay the costs of the application, provided they made another unsuccessful application to the Court, 'otherwise no order as to costs,' it was held by the Court of Common Pleas, on motion to rescind or vary the order, that the granting or refusing costs at chambers was in the judge, and was not subject to review: (Re *London and South-Western Railway Co.*; ex parte *Ilfracombe Public Conveyance Co.*, Weekly Notes, 23d Jan. 1869.)

Page 417, line 7—See Re *London and South-Western Railway Co.*, Weekly Notes, 5th Dec. 1868.

THE LAW OF RAILWAY COMPANIES.

COMPANIES CLAUSES CONSOLIDATION ACT,
1845.

(8 & 9 VICT. CAP. 16.)

An Act for consolidating in one Act certain provisions usually inserted in Acts with respect to the constitution of Companies incorporated for carrying on undertakings of a public nature.—[8th May, 1845.]

WHEREAS it is expedient to comprise in one general Act sundry provisions relating to the constitution and management of joint-stock companies, usually introduced into Acts of Parliament authorising the execution of undertakings of a public nature by such companies, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That this act shall apply to every joint-stock company which shall by any act which shall hereafter be passed be incorporated for the purpose of carrying on any undertaking (a), and this act shall be incorporated with such act, and all the clauses and provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the company which shall be incorporated by such act, and to the undertaking for carrying on which such company shall be incorporated, so far as the same shall be applicable thereto respectively; and such clauses and provisions, as well as the clauses and provisions of every other act which shall be incorporated with such act, shall, save as aforesaid,

Act to apply to all companies incorporated by acts hereafter to be passed.

2 Companies Clauses Consolidation Act, 1845, ss. 1, 2.

8 & 9 VICT. c. 16. form part of such act, and be construed together therewith as forming one act (b).

"Undertaking." (a) As to the meaning and extent of the word "undertaking," see the note to sec. 2, *post*.

(b) Care should be taken to set out in a bill of complaint all the clauses of the special act likely to be required for the support of the plaintiff's case; for it has been decided that the Court will not go out of the record, notwithstanding a clause in the special act that the act is to be a public act, and judicially taken notice of as such: (*Bailey v. Birkenhead Railway Co.*, 12 Bea. 433; 6 R. C. 256; 14 Jur. 119; and see 13 & 14 Vict. c. 21.)

Interpretations in this act: II. And with respect to the construction of this act, and of other acts to be incorporated therewith, be it enacted as follows:—

"the special act:" The expression "the special act" used in this act shall be construed to mean any act which shall be hereafter passed incorporating a joint-stock company for the purpose of carrying on any undertaking, and with which this act shall be so incorporated as aforesaid; and the word "prescribed" used in this act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act; and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special act" had been used; and the expression "the undertaking" (a) shall mean the undertaking or works, of whatever nature, which shall by the special act be authorised to be executed.

"Undertaking." Explanation of Lord Cairns. (a) As regards the effect of the word "undertaking," Lord Cairns, L. J., has observed, that "the object and intention of Parliament, in the case of each of these various undertakings, was clearly to create a railway which was to be made and maintained, by which tolls and profits were to be earned, which was to be worked and managed by a company, according to certain rules of management, and under a certain responsibility. The whole of this, when in operation, is the work contemplated by the Legislature, and it is to this that, in my opinion, the name of 'undertaking' is given. Moneys are provided for, and various ingredients go to make up the undertaking; but the term 'undertaking' is the proper style, not for the ingredients, but for the completed work, and it is from the completed work that any return of moneys or earnings can arise." The ingredients to which his Lordship refers as going to make up the undertaking, are explained by him in another part of the same judgment (p. 215), in which he says: "A railway is made and maintained by means of its capital, by means of its borrowed money, of its land, of its pro-

ceeds of sale of surplus land, of its permanent way, of its rolling stock : " (*Gardner v. London, Chatham, and Dover Railway Co.*, L. R. 2 Ch. App. 201, 216, 217 ; 15 W. R. 325 ; 36 L. J. (Ch.) 323.)

III. The following words and expressions both in this and the special act shall have the several meanings hereby assigned to them, unless there be something in the subject or the context repugnant to such construction ; that is to say—

Words importing the singular number only shall include the plural number ; and words importing the plural number only shall include the singular number :

Words importing the masculine gender only shall include females :

The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure :

The word "lease" shall include an agreement for a lease :

The word "month" shall mean calendar month :

The expression "Superior Courts" shall mean Her Majesty's Superior Courts of Record at *Westminster* or *Dublin*, as the case may require :

The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath :

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town :

The word "justice" shall mean justice of the peace acting for the county, city, borough, liberty Cinque Port, or other place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter (a) ; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together in Petty Sessions :

The expression "the company" (c) shall mean the company constituted by the special act :

The expression "the directors" shall mean the directors of the company, and shall include all persons having the direction of the undertaking, whether under the name of directors, managers, committee of management, or under any other name :

The word "shareholder" shall mean shareholder, pro-

Interpretations
in this and the
special act:

Number :

Gender :

"Lands :"

"Lease :"

"Month :"

"Superior
Courts :"

"Oath :"

"County :"

"Justice :"

"Two jus-
tices : " (b)

"The company :"

"Directors :"

"Shareholder :"
(d)

4 Companies Clauses Consolidation Act, 1845, ss. 3-5.

- 8 & 9 VICT. c. 16. proprietor, or member of the company; and in referring to any such shareholder, expressions properly applicable to a person shall be held to apply to a corporation: And
- "Secretary." The expression "the secretary" shall mean the secretary of the company, and shall include the word "clerk."
- Disqualifying interest. (a) As to disqualifying interest of justices, see *Reg. v. Rand*, 1 L. R. (Q. B.) 230; 35 L. J. (M. C.) 147; and *Grand Junction Canal Co. v. Dimes*, 2 M'N. & G. 285.
- "Two Justices." (b) By s. 14 of 2 & 3 Vict. c. 71, it is enacted that it shall be lawful for any one of the metropolitan police magistrates to do alone any act, at any of the Metropolitan Police Courts, which by any law then in force, or by any law not containing any express enactment to the contrary, thereafter to be made, was or should be directed to be done by more than one justice.
- "Company:" Railway Companies Act, 1867, s. 3. (c) The meaning of the term "company," as occurring in the Railway Companies Act, 1867, is restricted to a railway company; that is to say, a company constituted by Act of Parliament, or by certificate under Act of Parliament, for the purpose of constructing, maintaining, or working a railway, (either alone or in conjunction with any other purpose.)
- Regulation of Railways Act, 1868, s. 1 & 32 Vict. c. 119. The term "company," as used in the Regulation of Railways Act, 1868, (31 & 32 Vict. c. 119,) means a company incorporated, either before or after the passing of that act, for the purpose of constructing, maintaining, or working a railway in the United Kingdom, (either alone or in conjunction with any other purpose,) and includes, except when otherwise expressed, any individual or individuals not incorporated, who are owners or lessees of a railway in the United Kingdom, or parties to an agreement for working a railway in the United Kingdom.
- Use of a private railway for taking tolls, &c. In a case decided before the last-mentioned act was passed, where a railway act declared that nothing therein contained should prevent the owners, lessees, or occupiers of lands near the company's railway from making railways, roads, &c., across the company's railway, it was held, on appeal, that the plaintiff was entitled to use his railway, made by him over the defendants' line, as a common railway carrier for taking tolls and carrying passengers: (*Hughes v. Chester and Holyhead Railway Co.*, 1 Dr. & Sm. 524; 3 De G. F. & J. 352; 31 L. J. (Ch.) 97; 10 W. R. 219.)
- "Share" by Railway Companies Act, 1867, s. 3. (d) By the Railway Companies Act, 1867, (30 & 31 Vict. c. 127, s. 3,) the term "share" includes stock.
- Short title of the act. IV. And be it enacted, That in citing this act in other acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Companies Clauses Consolidation Act, 1845."
- Form in which portions of this act may be incorporated with other acts. V. And whereas it may be convenient in some cases to incorporate with acts of Parliament hereafter to be passed (a) some portion only of the provisions of this act; be it therefore enacted, That for the purpose of making any

such incorporation it shall be sufficient in any such act to enact that the clauses and provisions of this act, with respect to the matter so proposed to be incorporated, (describing such matter as it is described in this act in the words introductory to the enactment with respect to such matter,) shall be incorporated with such act; and thereupon all the clauses and provisions of this act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such act, form part of such act, and such act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such act shall relate.

(a) Upon the effect of the incorporation of this Act in Amendment and Extension Acts, see the notes to s. 5 of the Lands Clauses Act, *post*. s. 9 Vict. c. 16.
Incorporation in amendment and extension acts.

DISTRIBUTION OF CAPITAL.

And with respect to the distribution of the capital of the company into shares, be it enacted as follows: Distribution of capital.

VI. The capital of the company shall be divided into shares of the prescribed number and amount (a); and such shares shall be numbered in arithmetical progression (b), beginning with number one; and every such share shall be distinguished by its appropriate number. Capital to be divided into shares.

(a) As to the creation of shares for raising additional capital, see ss. 56-66, *post*, and also Companies Clauses Act, 1863, (26 & 27 Vict. c. 118, Part II.) It seems doubtful whether, without express parliamentary enactment, that is, by the mere resolution of the company, it is lawful to create preference shares, or to convert the original shares of the company into half shares, a portion of which should bear a preferential or guaranteed dividend: (*Sturge v. Eastern Union Railway Co.*, 7 De G. M. & G. 158, 175; *Matthews v. Great Northern Railway Co.*, 28 L. J. (Ch.) 375; *Fielden v. Lancashire and Yorkshire Railway Co.*, 2 De G. & Sm. 531.) Additional capital.
Creation of preference shares by resolution.

It seems that at law, if the prescribed number of shares have been issued, any additional and unauthorised issue would be illegal, and no action for non-registration of such shares would be maintainable: (*Daly v. Thompson*, 10 M. & W. 309.) Unauthorised issue beyond prescribed amount.

But, if by enactment subsequent to the issue of such shares, their existence is virtually recognised by Parliament, the defect, if any, would, it appears, be cured: (*Ibid.* See notes to s. 120, *post*, p. 110.) Recognition by subsequent act of previously created capital.

If there be nothing in the special act which prevents the company from altering the amount of the shares, they may from time to time do so: (*Ambergate Railway Co. v. Mitchell*, 6 R. C. 235.) Alteration of amount of each share.

It was decided in the case of *Irish Peat Co. v. Phillips*, 30 L. J. (Q. B.) 114; 9 W. R. 416, following the case of *Wolverhampton New*

6 Companies Clauses Consolidation Act, 1845, ss. 6, 7.

8 & 9 Vict. c. 16. *Waterworks Co. v. Hawksford*, 7 C. B. N. S. 795; 29 L. J. (C. P.) 121, that the fact that the shares which had been allotted to a defendant had not been specifically numbered and appropriated, was a bar to an action for calls. Some doubt, however, appears to have existed in the minds of some of the judges on the point, when the case afterwards came before them in the Exch. Chamber, (30 L. J. (Q. B.) 363); and in a very recent case, *East Gloucestershire Railway Co. v. Bartholomew*, L. R. 3 Exch. 15, it was decided, that this provision was directory merely; and if proof of the defendant's being a shareholder can be given *aliunde*, it is no objection to the reception of the register in evidence that it has not been complied with. See note to s. 28, *post*.

Shares to be personal estate (a). VII. All shares in the undertaking shall be personal estate, and transmissible as such, and shall not be of the nature of real estate (b).

Statute of Frauds. (a) Railway shares are not "an interest in land," nor "goods and merchandise," within the Statute of Frauds, (29 Car. I. c. 3): *Humble v. Mitchell*, 2 R. C. 70; 11 A. & E. 205; *Tempest v. Kilner*, 3 C. B. 249; *Bradley v. Holdsworth*, 3 M. & W. 422; *Duncuft v. Albrecht*, 12 Sim. 189.

Factors Act. Nor are they goods within the Factors Act, (5 and 6 Vict. c. 39): *Freeman v. Appleyard*, 32 L. J. (Exch.) 175; 11 W. R. 175; 7 L. T. N. S. 282.

Bail. They are property in respect of which bail may justify: *Pierpoint v. Brewer*, 15 M. & W. 201; 3 D. & L. 487.

Canal shares. Canal shares in one case were held to pass to the assignees of a bankrupt as personal estate: (*Ex parte Lancaster Canal Co.*, 1 Dea. & Chit. 411.)

Railway and canal shares not within Statute of Mortmain. (b) Shares in railway and canal companies, as well as in companies authorised to acquire and hold land, are not within the Statute of Mortmain, (9 Geo. II. c. 36): *Myers v. Perigal*, 2 De G. M. & G. 599; 16 Sim. 533; 11 C. B. 90; 21 L. J. (C. P.) 217; 16 Jur. 1118; *Walker v. Milne*, 11 Bea. 507; 18 L. J. (Ch.) 288; *Thornton v. Ellis*, 21 L. J. (Ch.) 714; *Thompson v. Thompson*, 1 Coll. 381; and see *Entwistle v. Davis*, L. R. 4 Eq. 272. In *Ashton v. Lord Langdale*, (20 L. J. (Ch.) 234; 4 De G. & Sm. 402,) it was held that a gift of such shares could be made by will to the National Debt Commissioners;

Gift of shares to National Debt Commissioners. and in *Sparling v. Parker* (9 Bea. 450; 16 L. J. (Ch.) 57) the same rule was applied to a bequest of shares to "poor persons." A case where a company leased their line to another company at an annual rent, secured by a power of re-entry, with an option of purchase by the lessees, did not form an exception to the above rule: (*Taylor v. Linley*, 2 De G. F. & J. 84; 1 Giff. 67.)

To "poor persons." Where line is in lease. No distinction was made in respect of shares in a company whose act contained no clause declaring that the shares should be personal estate: (*Edwards v. Hall*, 6 De G. M. & G. 74.)

Absence of clause that shares should be personal estate. *

* The Lord Chancellor in this case overruled the decision of the Master of the Rolls in *Ware v. Cumberlege*, (20 Bea. 503; 24 L. J. (Ch.) 830,) which decided that shares in the Grand Junction Waterworks Company were an exception to the rule.

See also upon this subject, *Morris v. Glyn*, 27 Bea. 218; *Hayter* 8 & 9 VICT. c. 16, v. *Tucker*, 4 K. & J. 243; *Jarman on Wills*, 3d ed. vol. i. p. 201, *et seq.*

By 23 & 24 Vict. c. 111, a note or memorandum or writing, commonly called a contract note, or by whatever name the same may be designated, for or relating to the sale or purchase of any government or other public stocks, funds, or securities, or any share or shares of or in any joint-stock or other public company, to the amount or value of £5 or upwards, must bear a penny stamp.

VIII. Every person who shall have subscribed the pre-Shareholders. scribed sum or upwards to the capital of the company, or shall otherwise have become entitled to a share in the company, and whose name shall have been entered on the register of shareholders hereinafter mentioned, shall be deemed a shareholder of the company.

(a) By the 21st section the term shareholder extends to and Shareholder. includes the legal personal representative of a shareholder. As to the liability of infant and lunatic shareholders, executors, &c., see note to s. 21, *post*.

As to the right of a person having but a small interest in the Purchase of company, or an interest acquired for the purpose to file a bill on shares in order to file a bill. behalf of himself and all other the shareholders in the company, in order to impeach the conduct of the directors, see *post*, the notes to s. 90.

The Court will not refuse relief on the ground that shares were Purchase of bought in order to enable the purchaser to attend a general meeting shares in order of the company, at which the acts of the directors were to be called to attend general into question: *Exeter and Crediton Railway Co. v. Buller*, 5 R. C. 211; 16 L. J. (Ch.) 449; *Seaton v. Grant*, L. R. 2 Ch. App. 459. meeting.

IX. The company shall (a) keep a book (b) to be called Registry of the "Register of Shareholders;" and in such book shall shareholders. be fairly and distinctly entered, from time to time, the names of the several corporations, and the names and additions (c) of the several persons entitled to shares in the company, together with the number (d) of shares to which such shareholders shall be respectively entitled, distinguishing each share by its number, and the amount of the subscriptions paid on such shares, and the surnames or corporate names of the said shareholders shall be placed in alphabetical order; and such book shall be authenticated by the common seal (e) of the company being affixed thereto; and such authentication shall take place at the first ordinary meeting, or at the next subsequent meeting of the company, and so from time to time at each ordinary meeting of the company (f).

8 Companies Clauses Consolidation Act, 1845, ss. 9, 10.

s. 9 VICT. c. 16.

Cases in which this section held directory.

Errors in register book.

Names and additions of shareholders. Number and amount of subscriptions. Seal.

Time of sealing.

Register in several volumes.

Insertion of names of persons not being shareholders.

Mode of keeping register.

Cases in which section not held merely directory.

Amount paid up on shares to be shown.

Rectification of register.

Seal improperly affixed.

Addresses of shareholders (a).

(a) It was formerly held, in cases arising under special acts containing sections similar to this section, that the provisions thereby enacted were merely directory.

(b) Thus, it has been said that a register containing mistakes "may be said to be in substance the book directed to be kept," if *bonâ fide* kept, (*Southampton Dock Co. v. Richards*, 1 M. & G. 448, 461; 2 R. C. 215.)

(c) The requirements with respect to the names and additions of the shareholders, (*London and Brighton Railway Co. v. Fairclough*, 2 M. & G. 674; 2 R. C. 544); (d) the number of shares and amount of subscriptions paid on them, (*Birmingham, Bristol, and Thames Railway Co. v. Locke*, 1 Q. B. 256); (e) the authentication of all the entries by seal, (*London Grand Junction Railway Co. v. Freeman*, 2 M. & G. 606; 2 R. C. 468); (f) and the time of sealing the register, (*Wolverhampton New Waterworks Co. v. Hawksford*, 11 C. B. N. S. 456; 31 L. J. (C. P.) 184; 10 W. R. 153,) have all been held to be directory merely.

The fact that the register is contained in several volumes, to the last of which only the common seal was affixed, did not prevent its being received in evidence: (*Inglis v. Great Northern Railway Co.*, 1 M'Q. 112.)

So also where the register contained the names of persons not entitled to shares, the register was held not to be thereby invalidated: (*London Grand Junction Railway Co. v. Freeman*, 2 M. & G. 606; 2 R. C. 468.)

The register would not be invalidated by being called "Register of Proprietors" instead of "Register of Shareholders;" nor by each share not being distinguished by its particular number; nor, probably, by a lump sum being placed after the numbers of the shares as the amount paid up on the whole amount of such shares: (*Bain v. Whitehaven and Furness Railway Co.*, 3 H. L. Cases, 1.)

But the principle of the above decisions does not appear to have been fully supported.

Since the company has, under this section, the privilege of making evidence for itself under s. 28 of the Companies Clauses Act, (see *post*), it was held that the provisions of this section must be strictly complied with, and are not to be looked upon as merely directory for the purposes of that section; the register must, therefore, show distinctly the amount of subscriptions paid up on the shares held by each shareholder: (*Bain v. Whitehaven, &c.*, R. C. 3 H. L. 1); see, however, *East Gloucestershire Railway Co. v. Bartholomew*, L. R. 3 Ex. 15, and *post*, the notes to s. 28.

Where a person agrees to advance a sum of money upon the security of paid-up shares, the company cannot put his name on the register for shares not paid up, and the Court will, on his application, order the register to be rectified; (*Ashworth v. Bristol and North Somersetshire Railway Co.*, 2 W. N. 30; 15 L. T. N. G. 561.)

The Court of Queen's Bench have refused a mandamus to remove a seal improperly affixed to a register: (*Ex parte Nash*, 15 Q. B. 92; 19 L. J. (Q. B.) 296.)

X. In addition to the said register of shareholders, the company shall provide a book, to be called the "Share-

holders' Address Book," in which the secretary shall from time to time enter in alphabetical order the corporate names and places of business of the several shareholders of the company, being corporations, and the surnames of the several other shareholders, with their respective christian names, places of abode, and descriptions, so far as the same shall be known to the company; and every shareholder, or if such shareholder be a corporation, the clerk or agent of such corporation, may at all convenient times peruse such book *gratis*, and may require a copy thereof or of any part thereof; and for every hundred words so required to be copied, the company may demand a sum not exceeding sixpence (b).

(a) As to the provisions of this section, see *London and Brighton Railway Co. v. Fairclough*, 2 M. & G. 674; 2 R. C. 544.

(b) A mandamus will lie to inspect the register; and where the railway has been misdescribed in the writ the Court will amend: (*R. v. Derbyshire Junction Railway Co.*, 23 L. J. (Q. B.) 333; 3 E. & B. 784.)

S & 9 VICT. c. 16.

Mandamus to inspect register. Misdescription of company in writ: leave to amend.

XI. On demand of the holder of any share the company shall cause a certificate of the proprietorship of such share to be delivered to such shareholder; and such certificate shall have the common seal of the company affixed thereto; and such certificate shall specify the share in the undertaking to which such shareholder is entitled; and the same may be according to the form in the schedule (A.) to this act annexed, or to the like effect; and for such certificate the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed, then a sum not exceeding two shillings and sixpence.

Certificates of shares to be issued to the shareholders (a).

(a) Scrip certificates, or letters of allotment, although not mentioned in this act, and although at law "a mere right to something which may hereafter exist, and the sale of them a mere assignment of a bargain," (per Parke B., in *Knight v. Barber*, 16 M. & W. 66,) and though "the sale of such certificates does not constitute the vendee a shareholder in the company," (*Midland Great Western Railway Co. v. Gordon*, 16 M. & W. 804; 5 R. C. 76; 16 L. J. (Exch.) 166); yet since "such sale conveys to the vendee an equitable title to have the shares assigned to him, and his name entered on the register," (*ibid.*); they have always possessed the character of certificates of proprietorship.

Vendor of scrip not a shareholder.

Has certificate of proprietorship merely.

Whatever may have been the doubts at the common law of the validity of their transfer by delivery merely, (see cases cited in *London Grand Junction Railway Co. v. Freeman*, 2 M. & G. 606; 2 R. C. 468; and see also the judgment of Parke B., in *Daly v. Thompson*, 10 M. & W. 309,) it appears that there is no doubt

Pass by delivery only.

- 8 & 9 VICT. c. 16. that they do pass by delivery merely, (*Heseltine v. Siggers*, 1 Exch. 856; *London Grand Junction Railway Co. v. Freeman, supra.*) without stamps, (*Wiley v. Parratt*, 6 R. C. 32; *Vollans v. Fletcher*, 1 Exch. 20;) and that on registration in respect of such certificates, the registered allottee or vendee becomes liable to pay calls in respect of the shares, (*Birmingham, Bristol, and Thames Junction Railway Co. v. Locke*, 1 Q. B. 256; *London Grand Junction Railway Co. v. Graham, ibid.* 271; *Sheffield, &c., Railway Co. v. Woodcock*, 2 R. C. 522.) But it was lately held in equity, where the plaintiff had applied for scrip certificates to bearer, and dealt with them in the market, but had taken no steps to have them exchanged for shares, that it was no part of his contract with the company to exchange them, and that he was not liable as a shareholder until steps had been taken to effect such exchange: (*Eustace v. Dublin Trunk Connecting Railway Co.*, L. R. 6 Eq. 182.)
- Validity in equity of scrip certificates and letters of allotment. It is not clear upon the cases in equity whether the issue of scrip certificates or letters of allotment before the incorporation of the company is legal, or the extent to which their sale and transfer are valid. *Jackson v. Cocker*, 4 Bea. 59; 2 R. C. 368, in which it was held by the Master of the Rolls that, where a person signed the subscription contract, and then sold his shares for valuable consideration, but without any agreement or contract in writing, he was not entitled to a decree for specific performance, nor to be indemnified in respect of calls on the shares subsequently allotted, nor to compel his vendee to take a transfer. (See also *Eustace v. Dublin Trunk Rail. Co.*, *ubi supra.*) A scrip-holder is, however, entitled to maintain a bill to restrain the directors from applying the funds raised by the issue of the scrip to purposes foreign to the object of such issue: (*Bagshaw v. Eastern Union Railway Co.*, 7 Hare, 114; 2 M'N. & G. 389.)
- Vendors of scrip need not be made parties to a bill for that purpose. In such a case it was held unnecessary to make the original vendors of the scrip parties to the bill, since the right to transfer the scrip passed to the holder or vendee, as soon as he complied with the conditions of the Act: (*Ibid.*) See further on this subject, *post*, pp. 75-79, 85.
- Remedy against stockbroker for non-completion by principal. A stockbroker has been held entitled to prove in bankruptcy for loss occasioned by the non-completion by his principal (who had become bankrupt) of a contract for the purchase of scrip, or the provisionally registered shares of a projected railway company: (*Ex parte Barton*, De Gex, Cases in Bankruptcy, p. 316; *Mitchell v. Newhall*, 15 M. & W. 308; 4 R. C. 300; S. C. nom. *Mitchell v. Newark*, 10 Jur. Exch. 318.)
- Proof in bankruptcy for deposit not allowed where subscription contract not signed. A person paying his deposit, but not signing the subscription contract, and therefore, as it seemed, not entitled to scrip certificates, was not allowed to prove for his deposit upon the bankruptcy of the company: (*Ex parte Clarke*, 5 R. C. 394.)
- Right of sale by registered scrip-holder. In another case, an original allottee of scrip certificates sold them, and after passing through several hands, they were sold to the plaintiff. As no one applied to be placed upon the register, the defendant, as original allottee of the scrip, was registered as proprietor. He thereupon sold it again, but was held bound to account for the scrip to the real holder of it: (*Beckett v. Bilbrough*, 8 Hare, 188.)
- Right to registration by scrip-holder. Though the principle is clear that the liability of the original

shareholder in respect of scrip certificates ceases with the registration of the vendee, and that until such registration it continues, (*Midland Great Western Railway Co. v. Gordon*, 16 L. J. (Exch.) 166; 16 M. & W. 804; 5 R. C. 76.) yet questions have often arisen between the vendor and vendee of such certificates, or between the company and the vendor or vendee, as to the right of registration as shareholder in respect of them. It appears clear that a holder of scrip certificates, who has executed the subscriber's agreement, may be registered without his sanction, and will remain liable for calls, (though he have sold his scrip in the market,) as long as his name remains on the register: (*Midland Great Western Railway Co. v. Gordon*, *supra*.)

Also that an original subscriber, who has not been registered, may make a valid transfer of scrip certificates: (*Sheffield, &c., Railway Co. v. Woodcock*, 2 R. C. 522.)

In the *Birmingham, Bristol, and Thames Junction Railway Co. v. Locke*, (1 Q. B. 256,) a purchaser of scrip from an unregistered vendor who had become an original subscriber by signing the preliminary contract, and making a deposit, but who himself had not signed the contract nor obtained a written conveyance of the shares, was held to be the proprietor of the shares.

And in *Cheltenham and Great Western Union Railway Co. v. Daniel*, (2 Q. B. 281, 292; 2 R. C. 728,) a defendant in an action for calls, who, as the holder of scrip certificates purchased from an original subscriber, and who had been registered as proprietor in respect of the certificates at his own request, was held liable, although the provisions of the act to make him a proprietor had not been complied with, and a regular transfer to him had not been made by the original holder, or any memorial of such transfer, as required by the act.

If a resolution, offering new shares to holders of scrip who shall register the scrip, fixes a day for the declaration of their option to take such shares, the time after which the option cannot be exercised is not that of the registry of the scrip, but the day fixed by the resolution: (*Pearson v. London and Croydon Railway Co.*, 14 Sim. 541.)

Where scrip, not authorised to be raised, had been issued, and the full number of shares allowed by charter already registered, it was held that the company could not on that ground refuse to register shares of those who had purchased genuine scrip: (*Daly v. Thompson*, 10 M. & W. 309.)

No action for non-delivery of scrip certificates will lie, if the property of the shares has actually vested in the plaintiff, as they are no more than *indicia* of the property; and an agreement to give shares is ratified without the delivery of scrip certificates: (*Hunt v. Gunn*, 3 F. & F. 223; 7 L. T. N. S. 277.)

These certificates are not goods within the Factory Act, 5 & 6 Vict. c. 39, s. 1: (*Freeman v. Appleyard*, 7 L. T. N. S. 282; 32 L. J. (Ex.) 175; 11 W. R. 175.)

Nor are they goods and merchandise within the *Stamp Act*, 55 Geo. III, c. 184: (*Knight v. Barber*, 16 M. & W. 66; 16 L. J. (Exch.) 18.)

XII. The said certificate shall be admitted in all Courts as *prima facie* evidence of the title of such shareholder, his executors, administrators, successors, or assigns, to the

Informal transfer of scrip.

Time of declaration of option by scrip-holders to take new shares.

Registration of shares in respect of scrip.

Action for non-delivery of scrip.

Scrip not goods within Factory Act.

nor within the Stamp Act.

Certificate to be evidence.

12 Companies Clauses Consolidation Act, 1845, ss. 12-14.

8 & 9 VICT. c. 16. share therein specified; nevertheless the want of such certificate shall not prevent the holder of any share from disposing thereof (a).

Notice of deposit. (a) The provisions contained in this section do not justify the inference that, upon a transfer without deposit of the certificates, notice to the company of such deposit may be dispensed with: (*Ex parte Boulton*, 26 L. J. (Bankruptcy) 45.)

Reputed ownership. But where scrip certificates had been deposited to secure a debt, without notice to the company, the owner becoming bankrupt, they were held to be in his reputed ownership, though no transfer could be made without production of the certificate: (*Re Grehan*, 1 Ir. L. R. Eq. 84.)

The cases with respect to the nature and transfer of scrip certificates will be found collected in the notes to s. 11, *ante*, pp. 9-11.

Certificate to be renewed when destroyed.

XIII. If any such certificate be worn out or damaged, then, upon the same being produced at some meeting of the directors, such directors may order the same to be cancelled, and thereupon another similar certificate shall be given to the party in whom the property of such certificate, and of the share therein mentioned, shall be at the time vested; or if such certificate be lost or destroyed, then, upon proof thereof to the satisfaction of the directors, a similar certificate shall be given to the party entitled to the certificate so lost or destroyed; and in either case a due entry of the substituted certificate shall be made by the secretary in the register of shareholders; and for every such certificate so given or exchanged the company may demand any sum not exceeding the prescribed amount; or if no amount be prescribed, then a sum not exceeding two shillings and sixpence.

TRANSFER OF SHARES.

Transfer of shares.

And with respect to the transfer or transmission of shares, be it enacted as follows:—

Transfer of shares to be by deed duly stamped.

XIV. Subject to the regulations herein or in the special Act contained, every shareholder (a) may sell and transfer*

* By the Scotch Lands Clauses Act, 1845, (8 & 9 Vict. c. 17,) s. 15, it is enacted, that, "whereas there may be many shareholders of the company who reside in England, and sales of shares are frequently made by persons in England to persons in Scotland, and *vice versa*, and it would be attended with inconvenience if all transfers of shares of the said company were required to be executed according to the forms of the law of Scotland, all transfers of shares of the said company shall be valid and effectual if executed according to the usual mode of executing such instruments either in England or Scotland, or partly according to one and partly according to the other."

all or any of his shares in the undertaking, or all or any part of his interest in the capital stock of the company, in case such shares shall, under the provision hereinafter contained, be consolidated into capital stock (b); and every such transfer shall be by deed duly stamped, in which the consideration shall be truly stated (c); and such deed may be according to the form in the schedule (B.) to this act annexed, or to the like effect (d).

(a) The Lords Justices decided, in a case where railway stock was standing in the name of a lunatic, that such stock was within the meaning of the word "stock" in the 140th section of the Lunacy Regulation Act, 1853, (16 & 17 Vict. c. 70,) and was, therefore, transferable under that section; and that the "proper officer" to transfer the same was the secretary of the company: (*Re Ives*, 32 L. J. (Ch.) 673.)

(b) Transfers made or obtained by means of fraud are void: (*Taylor v. Midland Railway Co.*, 29 L. J. (Ch.) 731; 23 Bea. 287; *Sloman v. Bank of England*, 14 Sim. 475; 14 L. J. (Ch.) 226; *Hare v. London and North Western Railway Co.*, 8 W. R. 352; 30 L. J. (Ch.) 821 n.)

But if the circumstances are such as should have put the company upon their guard as to the fraud, they will be bound to replace the stock so transferred. *Taylor v. Midland Railway Co.*, *ubi supra*, where one partner forged the name of his copartner to a transfer of railway stock held as partnership assets.

But a fraudulent transfer of debentures was ordered to be cancelled in the books of the company: (*Cottam v. Eastern Counties Railway Co.*, 1 J. & H. 243; 30 L. J. (Ch.) 217; 9 W. R. 94.)

There is nothing in this section to impugn the validity of an assignment by way of mortgage of shares or stock: (*Ex parte Little-dale, Re Pearce*, 24 L. J. (Bankruptcy) 9; *Ex parte Masterman*, 4 Deac. & Chit. 751.)

The importance, however, of giving notice to the company of such assignments, in all cases, whether a conditional transfer to the mortgage be made or not, will be seen from the note to the 20th section, *post*.

It may be observed that an equitable mortgage by deposit of shares or stock would probably be construed as an agreement to transfer such shares or stock: (*Ex parte Littledale*, 24 L. J. (Bankruptcy) 9.)

The Court of Queen's Bench have held that it is the duty of the purchaser to tender the deed of transfer, on the ground that such had been the uniform practice for many years, and that it was convenient to adhere to the usage: (*Stephens v. De Medina*, 4 Q. B. 422; 3 R. C. 454. See also *Bowlby v. Bell*, 4 R. C. 692.)

As to how far sales by brokers are affected by custom and local usage, the following cases may be consulted:—*Stewart v. Cauty*, 2 R. C. 616; 8 M. & W. 160; *Bayley v. Wilkins*, 7 C. B. 886; *Mitchell v. Newhall*, 15 M. & W. 308; 4 R. C. 300; S. C. nom. *Mitchell v. Newark*, 10 Jur. 318; *Lamert v. Heath*, 15 M. & W. 486; 4 R. C. 202; *Bayliffe v. Butterworth*, 5 R. C. 283; *McEwen v. Woods*, 11 Q. B. 13; 5 R. C. 335; *Pollock v. Stables*, 5 R. C. 352; 12 Q. B. 765.

14 Companies Clauses Consolidation Act, 1845, s. 14.

8 & 9 Vict. c. 10.

Statute of
Frauds.

Verbal agree-
ment to trans-
fer railway
shares.

Irregularity in
transfer.

Correction of re-
gister by altera-
tion of name.

Transfers in
blank.

Acceptance of
deed by trans-
feree.

Voting in respect
of a transfer in
blank.

Incorrect filling
in of blanks.

(c) It has been held that specific performance may be obtained in equity of a mere verbal agreement to transfer railway shares, since these are not "goods, wares, or merchandises" within the 17th section of the Statute of Frauds: (*Duncuft v. Albrecht*, 12 Sim. 189; and see *Humble v. Mitchell*, 2 R. C. 70; 11 A. & E. 205; *Tempest v. Kilner*, 3 C. B. 249; *Bradley v. Holdsworth*, 3 M. & W. 422.)

Where the plaintiff, in a suit against the company, had authorised another person to buy for him the shares in respect of which he rested his claim, but no transfer was made in consequence of the refusal of the agent to execute the transfer, the alteration of the name to that of the plaintiff, marked with the initials of the plaintiff by the clerk, but without any authority for that purpose, was held to invalidate the title of the plaintiff, and a plea to that effect was allowed: (*Hare v. London and North Western Railway Co.*, 8 W. R. 352; 30 L. J. (Ch.) 821, n.)

Blank transfers would probably in equity, as between a transferor and transferee for value, be held to bind the transferor, though by the general rule of law they are actually void: (*Hibblewhite v. M'Morine*, 6 M. & W. 200; 2 R. C. 51; *Humble v. Langston*, 2 R. C. 533.)

After long argument in the Court of Exchequer, and subsequent consideration in the Exchequer Chamber, where the plaintiff sued to have his name restored to the register for shares, a transfer of which, apparently duly executed by him, and actually having his real signature, was produced by the defendant; upon proof that the plaintiff had executed the deed of transfer in blank, and that it had been filled up without authority by the fraud of his agent, it was held, in the absence of sufficient proof of laches on the part of the plaintiff, that he was entitled to have his name restored to the register, although the subsequent transferees who had been registered in respect of the shares were *bonâ fide* holders for value: (*Swan v. North British Australasian Co.*, 31 L. J. (Exch.) 425; 7 H. & N. 603; 32 L. J. (Exch.) 273; 2 H. & C. 175; see also *Ex parte Swan*, 7 C. B. N. S. 400; 30 L. J. (C. P.) 113.)

It seems that if the transferee accepts the deed, fills it up, and registers it, the transfer is, as against him, perfectly effectual: (*In re Barned's Banking Co.*, 2 W. N. 280; 16 L. T. N. S. 514.)

If after executing transfers in blank, the transferee should vote by proxy at a meeting, it seems, from a late case with respect to a limited company, that such voting cures the defect as to the transfer: (*In re International Contract Corporation*, *Ex parte Langar*, 2 W. N. 293.)

And where the special act required the transfer to be by deed, and a transfer of shares was executed by the seller with a blank for the purchaser's name, and stating the consideration untruly, but the purchaser afterwards signed and transmitted to the company, in pursuance of the act, a proxy paper describing him as the proprietor of the shares, it was held that in an action by the company against him for calls on shares he was precluded from disputing the validity of the transfer: (*Sheffield and Manchester Railway Co. v. Woodcock*, 7 M. & W. 574; 2 R. C. 522.)

But where the holder of shares, intending to sell them, gave blank transfers to his broker, who filled in the blanks for the descriptions of another class of shares held by his client in the same company, but leaving the transferee's name in blank, the transfer was con-

sidered to be void, and the registration in the name of the ultimate purchaser was restrained. If any equity arose out of the conduct of the plaintiff, it could be enforced only by cross-bill: (*Taylor v. Great Indian Peninsular Railway Co.*, 4 De G. & J. 559: 28 L. J. (Ch.) 285, 709.)

Where the transferee's name was not inserted, and before the blank was filled up he became bankrupt, the shares were held not to be in his order or disposition, or in his reputed ownership: (*Morris v. Cannon*, 31 L. J. (Ch.) 425.)

But generally where the statutory directions as to transfers are not properly carried out, the shares will remain in the order and disposition of the intended transferor upon his bankruptcy: (*Ex parte Lancaster Canal Co.*, 1 Deac. & Chit. 411.)

When the name of a purchaser was inserted in a deed of transfer executed by the transferor, upon a new purchaser being substituted for the original purchaser, and a re-execution by the transferor, a new stamp was held to be required, although the original purchaser had never executed the deed: (*London and Brighton Railway Co. v. Fairclough*, 2 M. & G. 674; 2 R. C. 544.)

A deed jointly transferring separate interests in shares requires only one *ad valorem* stamp: (*Wills v. Bridge*, 4 Exch. 193.)

As to the stamp duties payable upon transfers and mortgages of shares, see 13 & 14 Vict. c. 97.

(d) It is not necessary that the deed of transfer should be in the form given in the schedule, since the words of this section are quite discretionary. There can, however, be no doubt as to the advisability of adopting the statutory form: (*Copeland v. North-Eastern Railway Co.*, 6 E. & B. 277; and *Reg. v. London General Cemetery Co.*, *ib.* 415, where a mandamus was refused to compel a company to register a transfer which was by way of mortgage, not "to the like effect" with the statutory form.

XV. The said deed of transfer (when duly executed) shall be delivered to the secretary, and be kept by him; and the secretary shall enter a memorial thereof in a book to be called the "Register of Transfers," and shall endorse such entry on the deed of transfer, and shall, on demand, deliver a new certificate to the purchaser (a); and for every such entry, together with such endorsement and certificate, the company may demand any sum not exceeding the prescribed amount, or if no amount be prescribed, then a sum not exceeding two shillings and sixpence; and on the request of the purchaser of any share an endorsement of such transfer shall be made on the certificate of such share, instead of a new certificate being granted; and such endorsement, being signed by the secretary, shall be considered in every respect the same as a new certificate; and until such transfer has been so delivered to the secretary as aforesaid the vendor of the

8 & 9 Vict. c. 16.

Effect of blank transfer when transferee becomes bankrupt.

Substitution of a new purchaser in transfer deed.

Joint transfer.

Form of deed of transfer.

Transfers of shares to be registered, &c.

s & 9 VICT. c. 16. share shall continue liable (b) to the company for any calls that may be made upon such share, and the purchaser of the share shall not be entitled to receive any share of the profits of the undertaking, or to vote in respect of such share.

Action for omission or refusal by company to register transfer. (a) The omission or refusal without just cause by the company to comply with the provisions of this section, or their subsequently declaring a forfeiture of the shares for non-payment of calls, will support an action against them by the purchaser, in respect of the damage he may have sustained: (*Catchpole v. Ambergate Railway Co.*, 1 E. & B. 111; 7 R. C. 221.)

It is not necessary to allege in the declaration that a reasonable time for registering the shares has elapsed: (*Ibid.*)

Mandamus to register. And a mandamus will lie under such circumstances to the company to register: (*Ward v. South-Eastern Railway Co.*, 29 L. J. (Q. B.) 177.)

Applicant for mandamus must be *bonâ fide* holder. But the mandamus will be refused if the applicant had not become a shareholder with a *bonâ fide* intention, or applied indirectly for an improper purpose to be registered, (*Reg. v. Liverpool and Newcastle Railway Co.*, 21 L. J. (Q. B.) 284; 16 Jur. 949;) or

Call pending. where there has been a call made, and not paid before the execution of the deed, although it had been executed before notice of call served on the transferor: (*R. v. Londonderry and Coleraine Railway Co.*, 13 Q. B. 998; see also *Hall v. Norfolk Estuary Co.*, 21 L. J. (Q. B.) 94; 16 Jur. 149.) So it has been refused where transfer differed materially from the statutory form, being in fact a mortgage: (*R. v. London General Cemetery Co.*, 6 E. & B. 415; see also *Copeland v. North-Eastern Railway Co.*, 6 E. & B. 277.)

No mandamus where deed informal. But if there be issues of fact in the count containing the prayer for the mandamus, it will be suspended till the issue has been tried: (*Norris v. Irish Land Co.*, 8 E. & B. 512; 27 L. J. (Q. B.) 115; see also *Reg. v. Midland Counties and Shannon Junction Railway Co.*, and *Reg. v. Same*, 8 Ir. Jur. N. S. (Q. B.) 246, 250; 19 L. J. N. S. 151, 155.)

Question of fact to be tried before mandamus granted. From the analogy of similar cases decided under the Joint-Stock Companies Acts, it would seem that the Court will not compel the company to correct their register by removing one name and inserting another, while an action at law is pending on the same matter: (*Ex parte Harris*, 29 L. J. (Exch.) 364; 5 H. & N. 809.)

Mandamus of correction of register. On a railway company discovering that stock standing in the name of W. had been bought, and afterwards sold to him by a married woman under a false name without her husband's knowledge or consent as trustee for L, they struck out W.'s name and substituted that of L's assignee in insolvency, W. having acted without fraud in the matter, was held entitled to a mandamus to the company to replace his name on the register; and that his name having been once entered on the registry, it was not removable at the will of the company, but only on proof of better title: (*Ward v. South-Eastern Railway Co.*, 2 El. & El. 811.)

Rectification of register in case of fraud. (b) The vendor of shares is bound in equity to have himself registered, so as to relieve the vendor of the liability to pay calls:

Purchaser's obligation to register.

(*Wynne v. Price*, 5 R. C. 465; *Shaw v. Fisher*, 5 R. C. 461; *Ex parte S & 9 Vict. c. 16. Straffon's Executors*, 1 De G. M. & G. 576; 4 De G. & Sm. 256; —
22 L. J. (Ch.) 194.)

The purchaser must, however, pay calls made since the sale: *Purchaser to pay calls made since sale.*
(*Wynne v. Price*, 5 R. C. 465.)

And where a purchaser was unable to obtain a transfer, and the registered owner again sold his shares to another person, but no transfer was registered, so that the vendor remained liable to calls, it was referred to the Master to ascertain the title to the shares, but it was admitted that the plaintiff, the vendor, had a right to some relief: (*Shaw v. Fisher*, 5 R. C. 461.) *Remedy where purchaser has not registered.*

So, at law there is an implied promise that he will indemnify the vendor for all calls made while he continues the beneficial owner, which implication will support an action against the vendor in respect of calls paid by the latter, in consequence of his omission to register himself: (*Walker v. Bartlett*, 18 C. B. 845;) although it has been decided that an action by the vendor for money had and received will not lie: (*Sayles v. Blane*, 6 R. C. 79; 19 L. J. (Q. B.) 19; 14 Q. B. 205;) but where the transfer had been executed in blank, it was held that there was no such contract on the part of the vendee to indemnify the vendor against subsequent calls: (*Humble v. Langton*, 7 M. & W. 517; 2 R. C. 533.) *Implied promise by vendee to indemnify vendor until registration. Action thereon by vendor for money had and received will not lie. Transfer in blank.*

A legatee of shares is entitled on a similar principle to have all calls made both before and after the death of the testator, paid by the executors: (*Jacques v. Chambers*, 2 Coll. C. C. 435; 4 R. C. 502.) *Legatee's claim for unpaid calls against testator's estate.*

With regard to the right of a holder of scrip certificates to be registered in respect of them, and generally as to the law in reference to scrip, see the notes to s. 8, *ante*, p. 13. *Scrip certificates.*

It has been held, that a holder of scrip certificates, who has been registered in respect of them without his sanction, and who, before his name had been registered, had sold the scrip, is liable to pay calls made on them after their sale: (*Midland Great Western Railway Co. v. Gordon*, 16 M. & W. 804; 5 R. C. 76.) *Calls on scrip.*

So the liability to pay calls was held to exist where the transfer had been registered, in respect of shares which had been informally transferred to him by a holder who himself had never been registered, where he had precluded himself from relying on defects in the transfer: (*Sheffield, &c. Railway Co. v. Woodcock*, 7 M. & W. 574; 2 R. C. 522; *Cheltenham, &c. Railway Co. v. Daniel*, 2 Q. B. 281; 2 R. C. 728.) *Liability upon informal transfers.*

XVI. No shareholder shall be entitled to transfer any share, after any call shall have been made in respect thereof, until he shall have paid such call, nor until he shall have paid all calls for the time being due on every share held by him (a). *Transfer not to be made until calls paid.*

(a) It has been held that the prohibition of this section extends only to the transfer of shares on which a call can be and has been made, and has no application to the transfer of shares on which all *Application of this section to paid-up shares.*

18 *Companies Clauses Consolidation Act, 1845, ss. 16-18.*

8 & 9 Vict. c. 16. the calls have been paid : (*Hubbersty v. Manchester and Lincolnshire Railway Co.*, L. R. 2, Q. B. 471, Exch. Ch.; 16 L. T. N. S. 425,) affirming judgment in the Court of Queen's Bench : (*Ibid.* p. 59; 36 L. J. (Q. B.) 33; 15 W. R. 254.)

Vendor may transfer shares on which a call made is not payable until after transfer.
Call paid by broker to enable transfer to be made.
Action for non-acceptance of transfer.

It seems that non-payment of a call made before a transfer, but not payable until after the execution of the transfer, forms no bar to the vendor's title to transfer the shares : (*Re Orpen*, 32 L. J. (Ch.) 637.) If, to enable the making of a transfer, the broker of the seller pay a call already made, but not then payable, he may recover in an action for money paid to the use of the seller : (*Bayley v. Wilkins*, 7 C. B. 886.)

Refusal by company to register after call made.

As between the parties to an agreement for sale of shares, it appears that an action for not accepting is maintainable, if the vendor be in a condition to transfer at any time by paying calls due, and that the fault of non-completion of the transfer has been with the defendants : (*Shaw v. Rowley*, 16 M. & W. 810; 5 R. C. 47.)

Informal transfer.

But the company may refuse to register a transfer, though the deed be tendered to them after call made, and before the vendor had received notice of the call having been made : (*R. v. Londonderry and Coleraine Railway Co.*, 13 Q. B. 998.)

Time of making calls.

So also, where a deed tendered for registration did not contain the address of the vendee, and a call was made pending inquiries respecting it : (*Hall v. Norfolk Estuary Co.*, 21 L. J. (Q. B.) 94; S. C. nom. *Reg. v. Wing*, 17 Q. B. 645.)

Closing of transfer books.

As to the time of making calls, see further notes to s. 22, *post*, p. 23.

XVII. It shall be lawful for the directors to close the register of transfers for the prescribed period, or if no period be prescribed, then for a period not exceeding fourteen days previous to each ordinary meeting, and they may fix a day for the closing of the same, of which seven days' notice shall be given by advertisement in some newspaper as after mentioned; and any transfer made during the time when the transfer books are so closed shall, as between the company and the party claiming under the same, but not otherwise, be considered as made subsequently to such ordinary meeting.

Transmission of shares by other means than transfer to be authenticated by a declaration.

XVIII. If the interest in any share have become transmitted in consequence of the death or bankruptcy (a) or insolvency of any shareholder, or in consequence of the marriage (b) of a female shareholder, or by any other lawful means (c) than by a transfer according to the provisions of this or the special act, such transmission shall be authenticated by a declaration in writing as herein after mentioned, or in such other manner as the directors shall require; and every such declaration shall state the manner in which and

the party to whom such share shall have been so transmitted, and shall be made and signed by some credible person before a justice, or before a Master or Master extraordinary of the High Court of Chancery; and such declaration shall be left with the secretary, and thereupon he shall enter the name of the person entitled under such transmission in the register of shareholders; and for every such entry the company may demand any sum not exceeding the prescribed amount, and where no amount shall be prescribed then not exceeding five shillings; and until such transmission has been so authenticated no person claiming by virtue of any such transmission shall be entitled to receive any share of the profits of the undertaking, nor to vote in respect of any such share as the holder thereof.

(a) As to acceptance by assignees, see *South Staffordshire Railway Co. v. Burnside*, 5 Exch. 129; 6 R. C. 611. And see p. 27, *post*. Acceptance by assignees.

(b) A married woman who has become a registered shareholder in respect of shares purchased with her own money, may sue the company for dividends, subject to a plea in abatement for the non-judgment of her husband: (*Dalton v. Midland Counties Railway*, 13 C. B. 474; J. 22 L. (C. P.) 177; 17 Jur. 719; 21 L. T. 102.) Action by married woman.

(c) As to the transfer of a lunatic's stock, see *Re Ives*, 32 L. J. Lunatic's stock. (Ch.) 673; 11 W. R. 578; 8 L. T. N. S. 266, *ante*, p. 13.

XIX. If such transmission be by virtue of the marriage of a female shareholder, the said declaration shall contain a copy of the register of such marriage, or other particulars of the celebration thereof, and shall declare the identity of the wife with the holder of such share; and if such transmission have taken place by virtue of any testamentary instrument, or by intestacy, the probate of the will (a) or the letters of administration, or an official extract therefrom, shall, together with such declaration, be produced to the secretary; and upon such production in either of the cases aforesaid the secretary shall make an entry of the declaration in the said register of transfers. Proof of transmission by marriage, will, &c.

(a) In *R. v. Worcester and Birmingham Canal Co.*, 1 M. & R. 529, the Court granted a mandamus directing the company to enter upon their books the probate of the will of a deceased shareholder, leaving any question as to the validity and effect of the probate to be raised by a return to the writ. Proof of will.

XX. The company shall not be bound to see to the execution of any trust (a), whether express, implied, or constructive, to which any of the said shares may be sub- Company not bound to regard trusts.

§ 49 VICT. c. 16. ject; and the receipt of the party in whose name any such share shall stand in the books of the company, or if it stands in the names of more parties than one, the receipt of one of the parties named in the register of shareholders, shall from time to time be a sufficient discharge to the company for any dividend or other sum of money payable in respect of such share, notwithstanding any trusts to which such share may then be subject, and whether or not the company have had notice of such trusts; and the company shall not be bound to see to the application of the money paid upon such receipt (a).

Persons whose names are on register liable for calls.

Shares held in trust for the company liable for calls.

Notice of charges to be given to the company.

Priority secured by notice given.

Notice to shareholder not notice to company.

Company not affected by constructive notice to its officer.

(a) The persons whose names appear upon the register as shareholders are the persons liable to pay calls, and to undertake the liability on the shares.

Thus, where several promoters of a company subscribed for additional shares, in order to comply with the Standing Order of the House of Lords, requiring a certain proportion of the capital to be subscribed, but by a memorandum it was declared that such additional shares were held in trust for the company, it was held, that, whatever their right to be reimbursed by their *cestuis que trustent* might be, the subscribers for these shares were primarily liable for calls made after the passing of the act: (*Preston v. Grand Collier Dock Co.*, 11 Sim. 327; 2 R. C. 335; and see *Mangles v. Grand Collier Dock Co.*, 11 Sim. 359.)

Although the company are not bound to see to the execution of any trust to which shares may be subject, still it is in the highest degree important that notice should be given to the company of any equitable interest in, or charge upon, shares, in order that a subsequent mortgagee by giving such notice may not obtain thereby a right prior to that of a previous, but less cautious, incumbrancer: (See *Newry, Warrenpoint, and Rostrevor Railway Co. v. Moss*, 14 Bea. 64; *Martin v. Sedgwick*, 9 Bea. 333; Lewin on Trusts, 4th edit. 457; 5th edit. 500.)

Although a trust might be enforced, still the Court will do so only at the instance of the parties to the trust. There is no relation of trustee and *cestui que trust* between the company and a mortgagee; and if the latter has given no notice, a subsequent mortgagee who has done so will be preferred, the remedy (if any) being against the mortgagor: (*Newry, &c., Railway Co. v. Moss*, 14 Bea. 64.)

The fact that one shareholder or partner has notice of the transaction is not sufficient: (*Martin v. Sedgwick*, 9 Bea. 333; *Ex parte Watkins*, 2 Mont. & A. 348.)

Nor if one of the parties to the transaction is an officer of the company, are the company affected with constructive notice of the charge: (*Ex parte Boulton*, 1 De G. & J. 163; 26 L. J. (Bank.) 45.)

Where one director transferred shares to another person, in order to qualify the latter as a director, but the shares remained charged with the payment of their value to the transferor; upon the death

of the transferee, it was held that the transferor could not call for a re-transfer, since he had given no notice of the charge, and thus lost his lien on the shares: (*Cumming v. Prescott*, 2 Y. & C. (Ex.) 488.)

In the event of a charge created upon his shares by a person who is or becomes bankrupt, the absence of notice to the company of such bankruptcy will have the effect of retaining the shares in the reputed ownership or order and disposition of the bankrupt: (*Thompson v. Speirs*, 14 L. J. (Ch.) 453; *Ex parte Watkins*, 2 Mont. & A. 348; *Ex parte Ord*, 1 Deac. 166; *Ex parte Vallance*, 3 Mont. & A. 224.)

Notice of bankruptcy of mortgagor to be given or shares will be in the order and disposition of the bankrupt.

Where no notice of a charge on scrip certificates was given, and no transfer was allowed without production of the certificates, they remained in the owner's reputed ownership: (*Re Grehan*, 1 Ir. L. R. (Eq.) 84.)

That such notice will take the shares out of the bankrupt's order and disposition, was decided in *Ex parte Masterman*, 4 Deac. & Chit. 751.

But where the shares charged are held by directors of the company, it seems that notice need not be given: (*Ex parte Waithman*, 2 Mont. & A. 364; but see *Cumming v. Prescott*, 2 Y. & C. (Ex.) 488.)

Where directors are mortgagors notice not necessary.

A director who mortgages his shares will not, upon notice of the charge, lose his qualification as a director: (*Cumming v. Prescott*, 2 Y. & C. (Ex.) 488; *Re Pearce*, 24 L. J. (Bankruptcy) 9.)

Director does not lose qualification by mortgage of his shares.

A railway company holding shares in another company, such shares standing in the names of trustees, may sue the latter company, making the trustees defendants, and ask that their equitable title may be recognised and acted upon in respect of the administration of the affairs of the other company: (*Great Western Railway Co. v. Rushout*, 5 De G. & Sm. 290; 7 R. C. 991, 996.)

Company holding shares in another company, in the names of trustees.

PAYMENT OF CALLS.

And with respect to the payment of subscriptions and the means of enforcing the payment of calls, be it enacted as follows:

Payment of calls.

XXI. The several persons who have subscribed any money towards the undertaking, or their legal representatives (a), respectively, shall pay the sums respectively so subscribed, or such portions thereof as shall from time to time be called for by the company, at such times and places as shall be appointed by the company; and with respect to the provisions herein or in the special act contained for enforcing the payment of calls, the word "shareholder" shall extend to and include the legal personal representatives of such shareholder.

Subscriptions to be paid when called for.

(a) The insertion into this section of the words "or their legal personal representatives," has got rid of the question raised in one case, viz., whether members were liable for calls made before and

Liability of executors to pay calls.

22 Companies Clauses Consolidation Act, 1845, ss. 21, 22.

§ 9 VICT. c. 16, after the testator's decease. It was decided that the estate was liable for all such calls, with interest : (*Fyler v. Fyler*, 2 R. C. 813;) affirmed on appeal : (2 R. C. 873.)

Form in which executors may be sued at law. The executors of a shareholder are, however, not liable in an action for calls under the statutory form of s. 26 of this act, when the call is made in the lifetime of the testator : (*Birkenhead and Cheeshire Junction Railway Co. v. Cotesworth*, 6 R. C. 211.)

Liability for calls on shares specifically bequeathed ; Although it was decided in several cases that a specific legatee of shares is entitled to have future calls, as well as those left unpaid at the time of the testator's decease, paid out of the general personal estate, (*Jacques v. Chambers*, 2 Coll. 435 ; 4 R. C. 499 ; *Clive v. Clive*, Kay, 600 ; *Wright v. Warren*, 4 De G. & Sm. 367,) or out of any particular part of the testator's estate which he should have directed to be applied for the purpose, (*Blount v. Hipkins*, 7 Sim. 51,) still the principle was but reluctantly followed in *Wright v. Warren*, (*ubi supra*;) and a distinction was laid down by the present Master of the Rolls, viz., that where the interest of the testator in the subject-matter which he professes to bequeath is complete, or where it is so treated by him and by all persons unconnected with it, the future calls fall on the legatee and not on the general estate ; but where further payments are required to make perfect the interest which the testator professes to bequeath, the general personal estate is applicable for that purpose : (*Armstrong v. Burnet*, 20 Bea. 424 ; 24 L. J. (Ch.) 473.)

And for subscriptions payable by instalments. Thus in a case where the subscriptions were payable by instalments, it was held by the same learned judge that the specific legatee must bear those instalments not actually due and payable at the time of the testator's death : (*Addams v. Ferick*, 26 Bea. 384 ; 28 L. J. (Ch.) 594.)

And the distinction was approved and adopted by Sir R. T. Kindersley, V. C., who stated it as follows :—" Whatever payment was due at the time of the testator's death to constitute him a complete shareholder in the concern, and whatever calls were made at his death, must be paid out of his general estate ; but if at his death he was constituted a complete shareholder in the concern, whether it was a going concern at his death or not, whether it was partially or wholly completed, all the calls made subsequently to the death of the testator must be borne by the specific legatee : " (*Day v. Day*, 1 Dr. & Sm. 261 ; 29 L. J. (Ch.) 466. And see *Re Box*, 1 H. & M. 552, 33 L. J. (Ch.) 42, and *Jarman On Wills*, 3d ed. vol. ii. p. 596.

Defences to actions for calls. See *post*, pp. 25-27, the notes to s. 25, for defences at Common Law to actions for calls.

Power to make calls.

XXII. It shall be lawful for the company from time to time to make such calls (a) of money upon the respective shareholders, in respect of the amount of capital respectively subscribed or owing by them (b), as they shall think fit, provided that twenty-one days' (c) notice at the least be given of each call, and that no call exceed the prescribed amount, if any, and that successive calls be not made at less than the prescribed interval, if any, and that the

aggregate amount of calls made in any one year do not exceed the prescribed amount, if any; and every shareholder shall be liable to pay the amount of the calls so made, in respect of the shares held by him, to the persons and at the times and places (d) from time to time appointed by the company.

(a) The principle laid down in *Foss v. Harbottle*, (2 Hare 461,) that it is not for the Court to interfere, upon the representations of a shareholder, on behalf of himself and all other the shareholders in a company, in matters relating to the internal affairs of a company, because a general meeting might resolve to do exactly the reverse to the course directed by the Court, applies to the case of the power to make calls under this section; but this may be doubtful where it is shown that the money to be raised is to be applied to a purpose unauthorised by the company's Act of Parliament, such, for instance, as for making part of the line only.

S & O VICT. C. 10.

Jurisdiction in equity with regard to the making of calls.

Where money is intended to be illegally applied.

Thus, where calls were made on the shareholders in a railway company, for the purpose of paying off certain mortgages, and another call was made upon the holders of new shares created to satisfy the mortgages, an allegation that the calls were unnecessary, and that they were intended to be applied to other purposes than the satisfaction of the mortgages, was not, upon the principle stated above, considered sufficient to support a bill filed by two holders of new shares on behalf of themselves and all other the holders of new shares, for an injunction to restrain the directors from enforcing the call: (*Yettis v. Norfolk Railway Co.*, 3 De G. & Sm. 293; 5 R. C. 487.)

Departure from declared purpose of call.

And this case was followed in *Bailey v. Birkenhead, Lancashire, and Cheshire Junction Railway Co.*, 12 Bea. 433; 6 R. C. 256; 19 L. J. (Ch.) 377—where the only foundation for relief was the allegation that the calls were not wanted, and that the plaintiff and the other holders of the same class as himself were likely to be defrauded by an arrangement for the benefit of certain other classes of shareholders. It appeared that no attempt had been made to bring these matters under the notice of the shareholders at all, and a demurrer for want of equity was therefore allowed.

Allegation that call not necessary.

But where the directors can be shown to be raising money by means of calls for the carrying on works with a view to the completion of part only of the line, such partial completion is not within the powers of the company, and it seems that a shareholder, on behalf of himself and all other the shareholders of the company, would be entitled to restrain by injunction such illegal proceedings: (*Dumville v. Birkenhead, &c., Railway Co.*, 7 R. C. 932.) And the principle upon which the Master of the Rolls decided that case was approved by Lord Cottenham, although his Lordship considered, upon a bill founded on the same facts as *Dumville v. Birkenhead Railway Co.*, that the circumstances showed acquiescence and delay on the part of the plaintiff, whereby he had deprived himself of his right to relief: (*Graham v. Birkenhead, &c., Railway Co.*, 7 R. C. 938.)

Calls for completing part only of the line.

Lashes.

24 Companies Clauses Consolidation Act, 1845, s. 22.

- S. 22 VICT. C. 16.** Notwithstanding these cases, the Master of the Rolls in another case refused an injunction to restrain the making of calls, where it appeared that it was intended to construct part of the line only; but there being legal obligations to a considerable amount, which could not be satisfied without procuring the payment of calls, they were permitted to be made: (*Legan v. Lord Courteson*, 13 Bea. 22; 20 L. J. (Ch.) 347.)
- The cases generally, with regard to the exercise of the powers of directors, will be found collected in the notes to s. 90, *post*.
- It seems that the raising of the prescribed capital is not a condition precedent to the power to make calls: (*Re Jennings*, 1 Ir. Ch. Rep. 654, following *Waterford, &c., Railway Co. v. Dalbiac*, 20 L. J. (Ex.) 227.)
- Raising of prescribed capital not condition precedent to making calls.** As to what constitutes a valid call, see *Reg. v. Londonderry and Coleraine Railway Company*, 13 Q. B. 298; S. C. *Ex parte Tooke*, 18 L. J. (Q. B.) 343; 6 R. C. 1.
- What constitutes a valid call.** The resolution to make a call, and a circular announcing it sent to the shareholders, constitutes a call: (per Parke B. in *Shaw v. Rowley*, 16 M. & W. 810; 5 R. C. 47; or an application by public advertisement, where allowed by the special act: (*Newry Railway Company v. Edmunds*, 2 Exch. 118; 5 R. C. 275; 17 L. J. (Exch.) 102.)
- Resolution and circular.** (b) It is no legal objection to the validity of a call that it is payable by instalments: (*London and North-Western Railway v. Michael*, 6 R. C. 495; 6 Exch. 273; 20 L. J. (Exch.) 235; *Ambergate Railway Co. v. Norcliffe*, 6 Exch. 629; 6 R. C. 501);
- Advertisement.** But no action will lie for calls until all the instalments are due: (*Ambergate Railway Co. v. Coulthard*, 6 R. C. 218; 5 Exch. 459; 19 L. J. (Exch.) 311);
- Calls payable by instalments.** Nor are calls invalidated by the fact that the resolution was prospective: (*Sheffield and Manchester Railway Co. v. Woodcock*, 7 M. & W. 574; 2 R. C. 522.)
- No action maintainable till all instalments due.** As to calls void for excess, see *Welland Railway Co. v. Berrie*, 6 H. & N. 416; 30 L. J. (Exch.) 163.
- Resolution prospective.** Where a call was made of the whole amount to be subscribed at one time, it was held illegal; and a defendant in an action for the call was held not to be estopped from disputing its validity by the fact that he had paid part of it: (*Stratford and Moreton Railway Co. v. Stratton*, 2 B. & Ad. 518.)
- Calls void for excess.** In proving for the amount of calls against a bankrupt's estate, the company must not include the value of the shares in the amount of their claim: (*Re Jennings*, 1 Ir. Ch. R. 236.)
- Call of whole amount unpaid invalid.** (c) Twenty-one days' notice previous to the day of payment is good notice, and includes the first and last days of such period: (*Re Jennings*, 1 Ir. Ch. Rep. 654.)
- Proof for call on bankrupt's estate.** (d) Where a resolution of the directors to make a call did not specify the time and place of payment, or the persons to whom the payment was to be made, but these were specified in a notice in the local newspapers, according to the direction of the special act, it was held that the publication of the notice must be assumed to be the act of the directors, and that the call was properly made: (*Great North of England Railway Co. v. Biddulph*, 7 M. & W. 243; 2 R. C. 401.) And generally that the resolution need not contain these particulars if the notice do so, see *Sheffield and Manchester*
- Twenty-one days' notice, how computed.**
- Time and place.**

Railway Co. v. Woodcock, 7 M. & W. 574; 2 R. C. 522; *London and Brighton Railway Co. v. Fairclough*, 2 M. & G. 674; 2 R. C. 544; *Newry and Enniskillen Railway Co. v. Edmunds*, 2 Exch. 118; 5 R. C. 275; 17 L. J. (Ex.) 102.

XXIII. If, before or on the day appointed for payment, any shareholder do not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate allowed by law from the day appointed for the payment thereof to the time of the actual payment.

Interest to be paid on calls unpaid.

XXIV. It shall be lawful for the company, if they think fit, to receive from any of the shareholders willing to advance the same all or any part of the moneys due upon their respective shares beyond the sums actually called for; and upon the principal moneys so paid in advance, or so much thereof as from time to time shall exceed the amount of the calls then made upon the shares in respect of which such advance shall be made, the company may pay interest at such rate, not exceeding the legal rate of interest for the time being, as the shareholder paying such sum in advance and the company shall agree upon (a.)

Power to allow interest on payment of subscriptions before call.

(a) A specific bequest of shares and "all right, title, and interest" therein will pass to the legatee any advances in respect of future calls, which the testator may have made during his lifetime: (*Tanner v. Tanner*, 11 Bea. 69.)

Bequest of shares and all right, &c., will pass advances.

XXV. If at the time appointed by the company for the payment of any call any shareholder fail to pay the amount of such call, it shall be lawful for the company to sue (a) such shareholder for the amount thereof, in any court of law or equity having competent jurisdiction, and to recover the same, with lawful interest, from the day on which such call was payable.

Enforcement of calls by action.

(a) The plea of never indebted puts in issue all the material averments of the declaration, and, accordingly, pleas traversing that the defendant was holder of the shares, that the call was made, and the like, are unnecessary. The following pleas have been disallowed either for this reason or because they were held bad in themselves:—

Defences to actions for calls.

That a call is made for the purpose of carrying out a railway after a deviation has been made; that due notice of calls had not been given; that the notice did not specify time and place appointed for payment; that fewer shares had been allotted than the act required (*London and Brighton Railway Co. v. Wilson*, 6 Bing. N. C. 135;—

Pleas disallowed.

Calls made after deviation from plan.

Inadequate notice.

Full number of shares not allotted.

26 Companies Clauses Consolidation Act, 1845, s. 25.

8 & 9 Vict. c. 16.	1 R. C. 530.) That a competent number of directors were not present when calls were made: (<i>South-Eastern Railway Co. v. Hebblewhite</i> , 12 A. & E. 497; 2 R. C. 247.) That the appointment of the directors making the call had been invalid: (<i>Thames Haven Dock Co. v. Hall</i> , 3 R. C. 441.) That before the call was payable, the defendant transferred his shares to another, whereby he ceased to be a proprietor of the shares: (<i>Aylesbury Railway Co. v. Mount</i> , 7 M. & G. 898; and see <i>Waterford and Dublin Railway Co. v. Logan</i> , 19 L. J. (Q. B.) 259; 14 Q. B. 672.)
Call not made by quorum of directors.	
Appointment of directors invalid.	
Transfer of defendant's shares before call made.	
Proof that defendant is not a shareholder.	Under the plea of the general issue, the defendant may show that he is not a shareholder <i>de jure</i> , notwithstanding the <i>prima facie</i> evidence of the register: (<i>Shropshire Union Railway Co. v. Anderson</i> , 3 Exch. 401.)
Calls on scrip.	As to liability for calls of holders of scrip certificates, and defences arising out of the informality of the transfer of shares, see notes to s. 16, <i>ante</i> , p. 18. See notes to s. 28, <i>post</i> , pp. 28-30, for defences arising upon the irregularities or omissions of the register.
Informal transfers.	
Incorrect registration.	For pleas that the whole of the capital had not been subscribed as required, and their effect, see <i>Norwich and Lowestoft Navigation Co. v. Theobald</i> , 1 M. & M. 151; <i>Waterford and Dublin Railway Co. v. Dalbiac</i> , 6 Exch. 443; 20 L. J. (Exch.) 227; 6 R. C. 753.*
Pleas that whole capital not subscribed.	Since by the 29th section the remedy for non-payment of calls is not alternative but cumulative with that of action, it is no defence to such action to plead that before action brought the shares had been forfeited and sold: (<i>Great Northern Railway Co. v. Kennedy</i> , 4 Exch. 417; 6 R. C. 5; 7 D. & L. 197. See also <i>Inglis v. Great Northern Railway Co.</i> , 1 M'Q. 112; 16 Jur. 895, in <i>Dom. Proc.</i>)
Action notwithstanding forfeiture.	It is no answer to an action for calls to plead that the defendant sued as the registered holder of shares was an infant when he became so registered, and that he has not since his majority been registered anew, or ratified the original registration; for his permitting his name to remain so registered is such a ratification: (<i>Cork and Bandon Railway Co. v. Casenove</i> , 10 Q. B. 935; see also <i>Leeds and Thirsk Railway Co. v. Fearnley</i> , 4 Exch. 26; 18 L. J. (Exch.) 330; <i>London and North-Western Railway Co. v. M'Michael</i> , 20 L. J. (Exch.) 97.) And see <i>Capper's Case</i> , L. R. 3 Ch. App. 458.
Infancy.	But during infancy or at majority, the contract between the infant and the company is voidable by him, and a plea alleging repudiation at majority, and notice of the same, is a good one: (<i>Newry and Enniskillen Railway Co. v. Coombe</i> , 3 Exch. 565; 18 L. J. (Exch.) 325.)
Repudiation at majority.	For a plea setting up the bankruptcy of the defendant, see <i>South Staffordshire Railway Co. v. Burnside</i> , 5 Exch. 129; 20 L. J. (Exch.) 120; 6 R. C. 611.)
Bankruptcy.	It would seem to be no defence to an action for calls that the transaction under which the shares became the property of the defendant was tainted with illegality, the action not being on the executory contract, but upon the statutable liability: (<i>West Cornwall Railway Co. v. Mowatt</i> , 19 L. J. (Q. B.) 478; 15 Q. B. 521.)
Illegality of transaction no bar to action.	For a plea alleging fraud, see <i>Waterford and Dublin Railway Co. v. Logan</i> , 19 L. J. (Q. B.) 259; 14 Q. B. 672.
Plea alleging fraud.	And for pleas setting up a departure from the scheme originally proposed, see <i>Midland Great Western Railway Co. v. Gordon</i> , 16 M.
Departure from purposes of company.	

* See s. 16 of the Lands Clauses Consolidation Act, 1845, *post*.

& W. 804; 5 R. C. 76; 16 L. J. (Exch.) 166; *Cork and Youghal* 8 & 9 VICT. c. 16. *Railway Co. v. Paterson*, 18 C. B. 414.

Where the assignees of a bankrupt had not accepted the shares standing in his name, it was held that the claim for calls was not barred by his certificate, inasmuch as it was not a debt payable in future under the 51st sec. of 6 Geo. IV. c. 16, nor a debt due on a contingency within the meaning of the 36th sec. of that act: (*South Staffordshire Railway Co. v. Burnside*, 5 Exch. 129; 20 L. J. (Exch.) 180; 6 R. C. 611.)

Non-acceptance by assignees of shares of bankrupt.

It has been held that an action of debt by a railway company for calls is founded on statutory liability, and that therefore a plea that the claim of the company is barred by the Statute of Limitation, the cause of action not having accrued within six years, is bad, the proper limitation to the action being twenty years: *Cork and Bandon Railway Co. v. Goode*, 13 C. B. 826; 15 Jur. 555; but it seems that an action for calls under a foreign or colonial statute is founded on a simple contract, and the period of limitation is six years: (*Welland Railway Co. v. Blake*, 6 H. & N. 410; 30 L. J. (Exch.) 161.)

Plea of Statute of Limitations.

It is not necessary to add a count for interest in a declaration for debt for calls: (*Southampton Dock Co. v. Richards*, 1 M. & G. 448; 2 R. C. 215; *London and Brighton Railway Co. v. Fairclough*, 2 M. & G. 674; 2 R. C. 544; see also s. 27;) but care should be taken that the sum claimed at the end of the declaration be sufficient to cover the interest as well as the calls.

Count for interest need not be added.

An Irish railway company having offices at Westminster was compelled to give security for costs in an action for calls, though it had personal property in England, and most of its shareholders resided there: (*Kilkenny and Great Southern and Western Railway Co. v. Fielden*, 6 Exch. 81; 6 R. C. 785.)

Security for costs.

XXVI. In any action or suit to be brought by the company against any shareholder to recover any money due for any call, it shall not be necessary to set forth the special matter, but it shall be sufficient for the company to declare that the defendant is the holder of one share or more in the company (a), (stating the number of shares,) and is indebted to the company in the sum of money to which the calls in arrear shall amount in respect of one call or more upon one share or more, (stating the number and amount of such calls,) whereby an action hath accrued to the company by virtue of this and the special act.

Declaration in action for calls.

(a) In actions for calls the allegation that the defendant is the holder of shares, means that he was so at the time the call was made: (*Belfast and County Down Railway Co. v. Strange*, 1 Exch. 739; 5 R. C. 548.)

Allegation that defendant is a shareholder.

The executors of a shareholder are not liable in an action for calls under the statutory form when the call is made in the lifetime of the testator: (*Birkenhead and Cheshire Junction Railway Co. v. Ouseworth*, 6 R. C. 211;) and the count must be framed according to the fact.

Liability of executors.

28 *Companies Clauses Consolidation Act, 1845, ss. 27, 28.*

8 & 9 Vict. c. 16. For form of declaration, see Bullen and Leake's Precedents of Pleading, 2d ed. p. 119.

Matter to be proved in action for calls.

XXVII. On the trial or hearing of such action or suit it shall be sufficient to prove that the defendant at the time of making such call was a holder of one share or more in the undertaking, and that such call was in fact made, and such notice (a) thereof given as is directed by this or the special act; and it shall not be necessary to prove the appointment of the directors (b) who made such call, nor any other matter whatsoever; and thereupon the company shall be entitled to recover what shall be due upon such call, with interest thereon, unless it shall appear either that any such call exceeds the prescribed amount, or that due notice of such call was not given, or that the prescribed interval between two successive calls had not elapsed, or that calls amounting to more than the sum prescribed for the total amount of calls in one year had been made within that period.

Notice.

(a) Notice is necessary, though the special act may not require it; and the jury may infer that notice has been duly given, if the defendant has promised payment: (*Miles v. Bough*, 3 Q. B. 845; 3 R. C. 668.)

Proof of Notice.

As to the admissibility of evidence to prove notice, see *Eastern Union Railway Co. v. Symonds*, 5 Exch. 237; 6 R. C. 578.

Effect of clause declaring that appointment of directors not to be questioned in action for calls.

(b) A clause in a railway act declaring that the appointment of the directors could not be questioned in an action for calls, is sufficient to support a demurrer to a bill seeking to restrain by injunction such an action, the plaintiff alleging that the shares held by the directors were held by them as mere trustees for the company, taken for the sole purpose of passing the bill through the House of Lords, and that the meeting at which the call was made was therefore improperly constituted: (*Mangles v. Grand Collier Dock Co.*, 10 Sim. 519; 2 R. C. 359.)

Proof of proprietorship.

XXVIII. The production of the register (a) of shareholders shall be *prima facie* evidence of such defendant being a shareholder, and of the number and amount of his shares.

Production of register.

(a) The register is admissible in evidence on production without proof that the seal was duly affixed at a meeting of the company under s. 9. (*London and North-Western Railway Co. v. M'Michael*, 5 Exch. 855.)

Time of sealing register.

When, however, it appeared that a call was made in October, the share register containing defendant's name having been made out in September, and it was proved that the seal was not affixed until November, it was held to be no evidence of defendant's proprietorship at the time of the call: (*Cheltenham and Great Western Union*

Mode of keeping Register—Evidence of Ownership. 29

Railway Co. v. Price, 9 Car. & P. 55; see also *Wolverhampton New Waterworks Co. v. Hawksford*, 11 C. B. N. S. 456; 29 L. J. (C. P.) 121; 31 L. J. (C. P.) 184.

It has been held in numerous cases, that the provisions of s. 9 arising under special acts, are merely directory, and therefore that irregularities in respect of them will not prevent the register from being *prima facie* evidence under this section; thus it has been held in the case of the *London Grand Junction Railway Co. v. Freeman*, 2 M. & G. 606; 2 R. C. 468, that a register intended to be kept in pursuance of the provisions of the act, containing names of all persons supposed to be entitled to shares, though it in fact contained the names of persons not entitled to shares, and omitted the names of others who were; and although there were entries to which no seal had ever been attached; was a book kept in sufficient compliance with the act to render it admissible in evidence; and see *London and Grand Junction Railway Co. v. Graham*, 2 R. C. 570; 1 Q. B. 271.

And such a register, though it does not contain the amounts of subscriptions paid on the respective shares is *prima facie* evidence of the proprietorship of a shareholder entered on the register: (*Birmingham, Bristol, and Thames Junction Railway Co. v. Locke*, 1 Q. B. 256; 2 R. C. 571.)

So also though the names and additions of other shareholders directed to be inserted in the register were omitted: (*London and Brighton Railway Co. v. Fairclough*, 2 M. & G. 674; 2 R. C. 444.)

And, speaking generally, it is no objection to the admissibility of the register to prove a defendant's proprietorship, that omissions and irregularities are shown with respect to other proprietors: (*Southampton Dock Co. v. Richards*, 1 M. & G. 448; 2 R. C. 215: see also *West Cornwall Railway Co. v. Mowatt*, 15 Q. B. 521; 19 L. J. (Q. B.) 478; and see notes to s. 9, *ante*, p. 8.)

So also it was at one time thought doubtful whether the omission in the register to number and specify the shares would be sufficient in itself to exclude its admission to prove the liability of a defendant: (*Irish Peat Co. v. Phillips*, 1 B. & S. 598 in error, 629; 30 L. J. (Q. B.) 114 in error, 363; and see also *Wolverhampton New Waterworks Co. v. Hawksford*, 7 C. B. N. S. 795; 29 L. J. (C. P.) 121; but in a very recent case (*East Gloucestershire Railway Co. v. Bartlamore*, L. R. 3 Exch. 15) it was decided that, although the register did not indicate the distinguishing number of the defendant's shares, as it was proved *aliunde* that they had been numbered, it had been properly admitted in evidence on the trial, by the learned judge (Blackburn, J.), who had expressed an opinion that the whole of the provisions of the 8th section are directions merely, and not essential. It may, however, well be, that if there be no other evidence than the register of the shareholders, it must contain within itself all the particulars necessary to charge the defendant with liability in the action: (per Kelly C. B.; *ibid.* p. 22.)

Under certain circumstances, the evidence of the defendant's being a shareholder afforded by the register will be rebutted; thus, where the defendant had been allotted shares on the condition that they were to be forfeited if a certain deposit was not paid within a

Mode of keeping register.

Omission of amount of subscriptions;

Of names and additions of shareholders;

Of numbers specifying shares.

Rebuttal of *prima facie* evidence of register

8 & 9 VICT. c. 10. certain time, and the parliamentary contract not signed by him, and he paid the deposit, but did not execute the contract, and his name had been entered on the register, it was held that he was not a shareholder, and that these circumstances were an answer to the allegation of his name being on the register: (*Waterford and Dublin Railway Co. v. Pidcock*, 8 Exch. 279.)

Holders described as "B. and others, trustees." Where the register described the holders of shares to be "B. and others, trustees," it was held to be no evidence against a co-trustee of B., although his name was set out at length in the alphabetical register of the shareholders as joint-owner of the shares, and the secretary swore that the entry in the sealed register referred to the same persons and the same shares: (*Birkenhead, Lancashire, and Cheshire Junction Railway Co. v. Brownrigg*, 4 Exch. 426; 19 L. J. (Ex.) 27; 6 R. C. 47.)

See *West Cornwall Railway v. Mowatt*, 15 Q. B. 521; 19 L. J. (Q. B.) 478.

Evidence in criminal cases. In criminal cases the mere production of the register is sufficient evidence that a party named in it is a shareholder: (*R. v. Nash*, 16 Jur. 553; 21 L. J. (M. C.) 147.)

FORFEITURE FOR NON-PAYMENT OF CALLS.

Non-payment of calls. And with respect to the forfeiture of shares for non-payment of calls, be it enacted as follows:—

Forfeiture of shares for non-payment of calls. XXIX. If any shareholder fail to pay any call payable by him, together with the interest, if any, that shall have accrued thereon, the directors at any time after the expiration of two months from the day appointed for payment of such call, may declare (a) the share in respect of which such call was payable forfeited, and that whether the company have sued for the amount of such call or not (b).

Nature of the power discretionary. (a) The power of forfeiture is a discretionary one, to be exercised by the directors as trustees for the benefit of all the shareholders of the company. It is not, therefore, a proper subject of contract: (*Harris v. North Devon Railway Co.*, 20 Bea. 384.)

Not a proper subject of contract. Accordingly, directors having by letter offered a brother director an option to have his shares forfeited in default of payment of arrears of calls—an offer which was accepted by letter—were held entitled, notwithstanding the contract thus entered into, on reconsideration of their offer, to sue for such arrears, when it appeared that he was in good circumstances, and able to pay them: (*Ibid.*)

Forfeiture of shares deposited to secure debt owing to the company. And where the directors of a bank had power to forfeit the shares of a shareholder who had deposited them as security for the balance of his account, this power was construed to mean that the directors should not be obliged to raise the money by a sale of the shares, which might be injurious to the company, but might take the shares in reduction of the debt; and the option thus given to them was held to be one which they ought to exercise most scrupulously, as it in effect rendered them both vendors and purchasers, and bound

them to give the full market value for the shares, in default of which s & 9 Vict. c. 16. the transaction would be void as against the debtor: (*Stubbs v. Lister*, 1 Y. & C. C. C. 81.)

But acquiescence on the part of the shareholder would deprive him of his right to object to irregular proceedings by the directors. Acquiescence.

Thus where certain shareholders in a mining company, when the concern was unprofitable, objected to an exercise of a power in the directors to increase the amount of the call, and after a long absence from the country, during which the shares were forfeited, and the business became very profitable, a bill filed by them on their return, alleging illegal proceedings on the part of the directors, was dismissed, as such absence was unaccounted for, and no previous action had been taken with regard to the objections made: (*Prendergast v. Turton*, 1 Y. & C. C. C. 98.)

Nor, it seems, will an offer to pay interest be sufficient to re-establish the right to relief; for in a case where, by want of precaution on the part of the plaintiff, his address, for the time being, was not communicated to the secretary, the forfeiture of his shares, after the usual notices had been sent to his ordinary address, was deemed valid, although he offered to pay all arrears, with interest: (*Sparks v. Co. of Proprietors of the Liverpool Waterworks*, 13 Ves. 428.) Offer of payment of interest not sufficient to prevent forfeiture.

Where, upon a forfeiture, all the formalities directed by the act are not observed, it seems that, although the right to relief at law is undisputed, an interlocutory injunction would be refused, since the equity to be enforced on the hearing is uncertain. Upon the terms, however, of the plaintiff paying into Court the amount of the calls, and giving judgment in the action which had been brought, an interim order was made: (*Playfair v. Birmingham, Bristol, and Thames Junction Railway Co.*, 1 R. C. 640.) Irregular proceedings on forfeiture.

Where, before any actual declaration of forfeiture is made, the whole amount of what was due in respect of the call has been paid, and when no offer has been made by the directors to repay the amount, the Court will not allow the directors to proceed to a forfeiture: (*Preston v. Grand Collier Dock Co.*, 11 Sim. 327; 2 R. C. 335.) Payment of call before declaration of forfeiture.

But the directors have power to forfeit a share which has been transferred after a call has been made, and to hold the transferor to his legal liability thereon: (*Mangles v. Grand Collier Dock Co.*, 10 Sim. 541.) Transfer of share after call made.

(b) The remedy of forfeiture is made by this section cumulative with that of action for non-payment of calls: (See *Great Northern Railway Co. v. Kennedy*, 4 Exch. 417; 6 R. C. 5; 19 L. J. (Exch.) 11; *Edinburgh Railway Co. v. Hebblewhite*, 6 M. & W. 707; *Birmingham, Bristol, and Thames Junction Railway Co. v. Locke*, 1 Q. B. 256; and *Inglis v. Great Northern Railway Co.*, M'Q. 112; 16 Jur. 895.) Remedies of forfeiture and action cumulative.

But previously, where the remedy was in the alternative, the directors could not adopt both; and the proceeding to judgment and execution was held to be an election, and any declaration in a subsequent action a nullity: (*Giles v. Hutt*, 3 Exch. 18; 18 L. J. (Ex.) 53.)

There can be no forfeiture where calls are payable by instalments until all instalments are due: (*Ambergate Railway Co. v. Coulthard*, 5 Exch. 459; 6 R. C. 218.) Calls payable by instalments.

32 *Companies Clauses Consolidation Act, 1845, ss. 30-32.*

8 & 9 VICT. c. 16. With respect to cancellation of forfeited shares and consequent provisions, see the Companies Clauses Act, 1863 (27 & 28 VICT. c. 118, Part I. ss. 4-11, *post*.

Notice of forfeiture to be given before declaration thereof.

XXX. Before declaring any share forfeited the directors shall cause notice of such intention to be left at or transmitted by the post to the usual or last place of abode of the person appearing by the register of shareholders to be the proprietor of such share; and if the holder of any such share be abroad, or if his usual or last place of abode be not known to the directors, by reason of its being imperfectly described in the shareholders' address book, or otherwise, or if the interest in any such share shall be known by the directors to have become transmitted otherwise than by transfer, as herein before mentioned, but a declaration of such transmission shall not have been registered as aforesaid, and so the address of the parties to whom the same may have been transmitted, or may for the time being belong, shall not be known to the directors, the directors shall give public notice of such intention in the *London* or *Dublin* Gazette, according as the company's principal place of business shall be situate in *England* or *Ireland*, and also in some newspaper, as after mentioned; and the several notices aforesaid shall be given twenty-one days at least before the directors shall make such declaration of forfeiture.

Forfeiture to be confirmed by a general meeting.

XXXI. The said declaration of forfeiture shall not take effect so as to authorise the sale or other disposition of any share until such declaration have been confirmed at some general meeting of the company to be held after the expiration of two months at the least from the day on which such notice of intention to make such declaration of forfeiture shall have been given; and it shall be lawful for the company to confirm such forfeiture at any such meeting, and by an order at such meeting, or at any subsequent general meeting, to direct the share so forfeited to be sold or otherwise disposed of.

Sale of forfeited shares.

XXXII. After such confirmation as aforesaid it shall be lawful for the directors to sell the forfeited share, either by public auction or private contract, and if there be more than one such forfeited share, then either separately or together, as to them shall seem fit; and any shareholder may purchase any forfeited share so sold.

XXXIII. A declaration in writing, by some credible person not interested in the matter, made before any Justice, or before any Master or Master Extraordinary of the High Court of Chancery, that the call in respect of a share was made, and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was declared and confirmed in manner herein before required, shall be sufficient evidence of the facts therein stated; and such declaration, and the receipt of the treasurer of the company for the price of such share, shall constitute a good title to such share; and a certificate of proprietorship shall be delivered to such purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due prior to such purchase; and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

8 & 9 Vict. c. 16.
Evidence as to
forfeiture of
shares.

XXXIV. The company shall not sell or transfer more of the shares of any such defaulter than will be sufficient, as nearly as can be ascertained at the time of such sale, to pay the arrears then due from such defaulter on account of any calls, together with interest, and the expenses attending such sale and declaration of forfeiture; and if the money produced by the sale of any such forfeited shares be more than sufficient to pay all arrears of calls and interest thereon due at the time of such sale, and the expenses attending the declaration of forfeiture and sale thereof, the surplus shall, on demand, be paid to the defaulter.

No more shares
to be sold than
sufficient for pay-
ment of calls.

XXXV. If payment of such arrears of calls and interest and expenses be made before any share so forfeited and vested in the company shall have been sold, such share shall revert to the party to whom the same belonged before such forfeiture, in such manner as if such calls had been duly paid.

On payment of
calls before sale
the forfeited
shares to revert.

REMEDIES AGAINST SHAREHOLDERS.

And with respect to the remedies of creditors (a) of the company against the shareholders, be it enacted as follows:

Remedies against
shareholders.

XXXVI. If any execution,* either at law or in equity, shall have been issued against the property or effects of the

Execution
against share-
holders to the

* Or legal diligence or execution in Scotland: see the Scotch Lands Clauses Act, 1845, (8 and 9 Vict. c. 17,) s. 38.

34 *Companies Clauses Consolidation Act, 1845, s. 36.*

8 & 9 Vict. c. 16.
extent of their
shares in capital
not paid up.

company, and if there cannot be found sufficient whereon to levy such execution, then such execution may be issued against any of the shareholders (b) to the extent of their shares respectively in the capital of the company not then paid up: Provided always, that no such execution shall issue against any shareholder except upon an order of the court in which the action, suit, or other proceeding shall have been brought or instituted, made upon motion in open court after sufficient notice in writing to the persons sought to be charged; and upon such motion such court may order execution to issue accordingly; and for the purpose of ascertaining the names of the shareholders, and the amount of capital remaining to be paid up on their respective shares, it shall be lawful for any person entitled to any such execution, at all reasonable times, to inspect the register of shareholders without fee.

Bond creditors' right under this section.

(a) Not only the general creditors of the company, but also bond creditors whose rights are otherwise provided for by s. 44, (*post*, p. 49,) have been held to be entitled to the benefit of this section, and to proceed against the property and effects of the company in common with the general creditors: (*Russell v. East Anglian Railway Co.*, 3 M.N. & G. 125; 6 R. C. 501; and *per Lord Cairns, L. J.*, in *Gardner v. London, Chatham, and Dover Railway Co.*, L. R. 2 (Ch.) 201; 15 W. R. 325; 36 L. J. (Ch.) 323; 15 L. T. N. S. 552.

Proceeding by *sci. fa.* generally.

(b) It is a general rule that when a party out of the record is made subject to execution, the proper mode of procedure is by *scire facias*: (*Cross v. Law*, 6 M. & W. 217; *Ranford v. Bosanquet*, 12 Ad. & E. 813; 2 Q. B. 972;) and the shareholders of a railway company form no exception to the general rule; *Hitchins v. The Kilkenny, &c., Railway Co.*, 10 C. B. 160; 20 L. J. (C. P.) 31; 1 L. M. & P. 712. It was, however, the expressed opinion of Pollock, C. B., in *Devereux v. Kilkenny Railway Co.*, (5 Ex. 834; 20 L. J. (Ex.) 37,) that a less formal mode, by suggestion or motion, is equally competent.

Discretion of Court to issue writ.

The issuing of the writ is discretionary with the Court, and where a rule *nisi* had been obtained against a shareholder for a *scire facias*, the Court, on his application, made the rule absolute for execution without a *scire facias*: (*Burke v. Dublin Trunk Connecting Railway Co.*, L. R. 3 Q. B. 47.) The Court, however, will not grant a *scire facias* against a party, as a shareholder in a company, unless the affidavits show reasonable grounds for believing that the party to be charged is a shareholder; and the fact that one has applied for, and received an allotment of shares, and paid a deposit thereon, is not enough: (*Edwards v. Kilkenny Railway Co.*, 14 C. B. N. S. 626.)

Sci. fa. after return of *nulla bona* to *fi. fa.*

So also a *scire facias* will not be granted on an affidavit merely stating that judgment has been obtained against the company, and that two writs of *fi. fa.* had been issued against them, and had been

returned *nulla bona*: (*Hitchins v. The Kilkenny Railway Co.*, 8 & 9 Vict. c. 10. *supra*. See, however, *Devereux v. Kilkenny Railway Co.*, 5 Exch. 834; 20 L. J. (Exch.) 37; and the case of *Nixon v. Kilkenny Railway Co.*, 25 L. J. (Exch.) 249; 1 H. & N. 47, which decided that it is not necessary that the affidavit should show that due diligence has been used to discover the property of the company, and that it is enough to show that goods of the company cannot be found whereon to levy. The writ of *scire facias* must allege that the party is a shareholder, and the amount unpaid, and that execution has issued against the company, and been found unavailing, all of which is traversable: (*Devereux v. Kilkenny Railway Co.*, *supra*.) In this case the Court of Exchequer granted a writ of *sci. fa.* against a director, upon proof of his declaration at a meeting of the company, that they had no funds to meet the claims against the company, one of those claims being the judgment debt of the plaintiff. But it was also held that all due pains must have been shown to have been taken to obtain satisfaction from the property of the company in Ireland before the Court granted execution in this country.

As to the sufficiency of the affidavits, see *Rastrick v. Derbyshire, &c., Junction Railway Co.*, 9 Exch. 149; *Wyatt v. Darent Railway Co.*, 2 C. B. N. S. 110.

A creditor will not be deprived of his remedy against the shareholders, by the fact that he first issued an *elegit* against the lands of the company, which proved unproductive: (*Reg. v. Derbyshire, &c., Railway Co.*, 3 E. & B. 784; see also *Addison v. Tate*, 11 Exch. 250.) nor because there are funds belonging to the company in the hands of the official manager under the Winding-up Act: (*McKenzie v. Sligo & Shannon Railway Co.*, 4 E. & B. 119; 24 L. J. (Q. B.) 17; 3 W. R. 10; *Guest v. Cambridge Railway Co.*, 3 W. N. 235.)

The 27 & 28 Vict. c. 112, gives priority to the writ first in the hands of the sheriff, and an *elegit* issued in the hands of the sheriff, after a writ of *sci. fa.* not in the hands of the sheriff, will thus have the priority. It is not necessary that the sheriff's returns to abortive writs issued against the company should have actually been filed at the time of the motion: (*Ilfracombe Railway Co. v. Devon, &c., Railway Co.*, L. R. 2, C. P. 15.) As to serving notice on the shareholders, see *Edwards v. Kilkenny, &c., Railway Co.*, 1 C. B. N. S. 40; *Ilfracombe Railway Co. v. Devon, &c., Railway Co.*, *supra*.

The time at which persons must be shareholders, in order to be liable under this section, is the date of the return of *nulla bona*; hence pleas to a *scire facias*, that defendant was not a shareholder at the time of the issuing of the writ of *sci. fa.*, and that he was not a shareholder when the rule *nisi* for a *sci. fa.* was made absolute, are bad: (*Nixon v. Green*, 11 Exch. 550; 3 H. & N. 695; 25 L. J. (Exch.) 209.) A shareholder cannot escape from this liability to the company's creditors except by virtue of some act of theirs, and nothing but fraud on their part, or some contract or conduct of theirs precluding them from treating him as their debtor, will afford him a defence; for nothing is admissible as a defence to a *sci. fa.*, which might have been relied on as a defence to the action on which the judgment was founded: (*Per Lord Mansfield*, in *Cook v. Jones*, Cowp. 727.)

To a declaration in *scire facias* an equitable defence, that the de-

Sci. fa. after *elegit* sued out by same creditor.

Writ first with sheriff has priority.

Returns to abortive writs.

Serving of notices on shareholders.

Shareholders sued must be shareholders at return of *nulla bona*.

Defence to *sci. fa.*

8 & 9 Vict. c. 16. defendant was requested by the plaintiff to become a transferee of shares in the company as the nominee of others, and not on his own behalf, on the representation that he would incur no responsibility, and that, except as such nominee, he had no interest in the company, who had abandoned their undertaking, and that the plaintiff fraudulently sought, in violation of his representation, to charge the defendant, was held to afford no defence, legal or equitable: (*Bill v. Richards*, 2 H. & N. 311.)

Concurrent writs of *sci. fa.* Concurrent writs of *sci. fa.* may be issued; and it is no answer to a declaration in *sci. fa.* that after execution issued against a company, and return of *nulla bona*, and before motion to issue execution against the defendant, the plaintiff had issued writs of *sci. fa.* against other shareholders, which writs were still pending, and under which he could have raised the money due: (*Nixon v. Brownlow*, 1 H. & N. 405; 26 L. J. (Ex.) 12; but see *Kernaghan v. Dublin Trunk Railway Co.*, L. R. 3 Q. B. 47.)

Alteration and reduction of capital and shares. Nor can the defendant plead that the directors have obtained an act reducing the amount of capital, and altering the number and value of the shares, coupled with the absence of any evidence to show that defendant's allotment was altered, and proof that the directors had in the allotment of the new shares registered themselves for a smaller number, in proportion to their original subscription, than they sought to hold the defendant responsible for in the absence of fraud: (*Nixon v. Brownlow*, 26 L. J. (Ex.) 273; 27 L. J. (Ex.) 509; 2 H. & N. 455.)

Transfer of shares after *fi. fa.* returned *nulla bona*. Nor can a shareholder get rid of his liability to satisfy the judgment by transferring his shares after a return of *nulla bona* to a writ of *fi. fa.* issued against the company: (*Ibid.*)

Plea that judgment against company is void. It is a good plea to the *scire facias* to set forth facts showing the judgment obtained against the company to be void: (*Per Willes, J.*, in *Edwards v. Kilkenny Railway Co.*, 2 C. B. N. S. 397.) In this case, however, the Court refused to extend or enlarge a rule for a *sci. fa.* against a shareholder upon a suggestion that the judgment was for a claim which arose from legal expenses incurred in matters *ultra vires*.

It is not proper to raise the question of fraud, impeaching the judgment upon a motion for leave to issue a *sci. fa.*: (*Ibid.*)

Tender under protest. Where a plaintiff had obtained a rule calling upon a shareholder to show cause why execution should not issue against him under this section, and it appeared that subsequently a tender "under protest" had been made of the debt to stay process in the matter, which had been refused, the Court discharged the rule: (*Scott v. Usbridge, &c., Railway Co.*, 1 L. R. C. P. 596; 12 Jur. N. S. 602; 35 L. J. (C. P.) 293; 14 N. R. 893.)

Judgment-roll erroneous. The Court will not refuse to issue a writ of *sci. fa.* on the ground that the judgment-roll on which it proceeds is on the face of it erroneous: (*Williams v. Sidmouth Railway and Harbour Co.*, L. R. 2 Exch. 284.)

Refusal to allow a creditor to inspect register. If the inspection of the register is withheld from any creditor, he may file an affidavit stating that fact, and his best knowledge of who are the shareholders; and this unanswered will entitle him to issue execution against the persons named as shareholders in the affidavit: (*Rastrick v. Derbyshire Railway Co.*, 9 Exch. 149.)

Execution against Shareholders—Borrowing Powers. 37

The creditor is entitled to a mandamus for the production of the register: (*Reg. v. Derbyshire, &c., Railway Co.*, 3 E. & B. 784.)

His right to inspect the register may also be enforced by rule of court or order of a judge: (*Meador v. Isle of Wight Ferry Co.*, 9 W. R. 750.)

Execution against a shareholder may be allowed by the directors without laying themselves open to a charge of collusion, even though they may not have defended the former action against themselves: (*Horn v. Kilkenny and Great Southern and Western Railway Co.*, 1 E. & J. 399; 24 L. J. (Ch.) 241; *Green v. Nixon*, 23 Bea. 530; 17 L. J. (Ch.) 819.)

Nor will the plea avail that the original debt, under which judgment was obtained against the company, was contracted with the defendant for purposes which he himself knew to be illegal: (*Green v. Nixon, ubi supra.*)

In case, however, collusion between the directors and the judgment creditor can be properly shown, shareholders have a remedy by stopping beforehand the misapplication of the funds of the company by proceedings in the Court of Chancery; and by calling the directors to account for all moneys paid and received by them for the purposes of the company; either of which courses would have the effect of submitting the affairs of the company to an adjustment by a court of equity: (*Ibid.*)

By the Railway Companies Act, 1867, (30 & 31 Vict. c. 127, s. 4,) after the date of the passing of that act, i.e., the 20th August 1867, until the 1st September 1868,* the engines, tenders, carriages, tracks, machinery, tools, fittings, materials, and effects, constituting the rolling-stock and plant used or provided by a company for the purposes of the traffic on their railway, or of their stations or work-shops, are not, after their railway or any part thereof is open for public traffic, to be liable to be taken in execution at law or in equity, where the judgment on which execution issues is recovered in an action on a contract entered into after the passing of the act, or in an action not on a contract commenced after the passing of the act. (See the Act, *post.*)

XXXVII. If by means of any such execution any shareholder shall have paid any sum of money beyond the amount then due from him in respect of calls, he shall forthwith be reimbursed such additional sum by the directors out of the funds of the company.

POWER TO BORROW MONEY.

And with respect to the borrowing of money by the company on mortgage of bond, be it enacted as follows:

XXXVIII. If the company be authorised by the special act to borrow money on mortgage or bond, it shall be lawful for them, subject to the restrictions contained of the special act (a), to borrow on mortgage or bond such

* Extended to the 1st September 1870, by 31 & 32 Vict. c. 79.

38 Companies Clauses Consolidation Act, 1845, s. 38.

8 & 9 VICT. c. 16. sums of money as shall from time to time by an order of a general meeting of the company, be authorised to be borrowed, not exceeding in the whole the sum prescribed by the special act (b), and for securing the repayment of the money so borrowed, with interest (c), to mortgage the undertaking (d), and the future calls on the shareholders, or to give bonds in manner hereinafter mentioned.

Borrowing powers must be exercised strictly. (a) The borrowing powers of the company must be exercised strictly in accordance with the provisions of the Companies Clauses Act, and the restrictions imposed by the special act; and debentures or bonds issued without due observance of those provisions will not be binding upon the shareholders: (*Nowell v. Andover and Regbridge Railway Co.*, 3 Giff., 112; *West Cornwall Railway Co. v. Mowatt*, 17 L. J. (Ch.) 366; 12 Jur. 407; see also *Athenæum Life Assurance Co. v. Pooley*, 28 L. J. (Ch.) 119). See 7 & 8 Vict. c. 85, ss. 19-21 as to loan-notes.

Raising money on a stale resolution. Directors were restrained from issuing shares, upon the authority of a resolution passed two years and a half previously, empowering them to raise money for a particular purpose: (*Fraser v. Whalley*, 2 H. & M. 10.)

Bill to restrain borrowing until capital paid up. A bill, founded upon the ground that the borrowing powers are being improperly exercised by the directors, before such powers have come into operation, will be demurrable, if it do not contain distinct allegations that the prescribed amount of capital has not been paid up, and that the directors are about to issue bonds or mortgages before such payment is due: (*Nowell v. Andover and Redbridge Railway Co.*, 3 Giff. 112.)

Issue of debentures at a discount. And a bargain, whereby debentures are to be issued to a person who has undertaken to take all the misappropriated capital at a discount, is invalid, and the directors are justified in repudiating it: (*West Cornwall Railway Co. v. Mowatt*,* 17 L. J. (Ch.) 366; 12 Jur. 407.)

Lenders should inquire whether powers are properly exercised. As to the position of the holders of debentures in cases where the issue of them is illegal, it seems from the case of *Athenæum Life Assurance Co. v. Pooley*, (28 L. J. (Ch.) 119,) that not only is the first obligee in the wrong in not having ascertained whether there was fraud, but his purchaser is bound by the same equity.

Irregular exercise of borrowing powers. Estoppel. There is one case, however, in which the company may be bound by loans not raised in strict accordance with the statutory provisions, and that is when the money is *bonâ fide* raised and applied for the purposes of the company, binding the company by estoppel not to seek to set aside their own act, the benefit of which they have already received.

This was decided in a case at law with regard to a company incorporated by act of Parliament: (*Hill v. Manchester and Salford Waterworks Co.*, 2 B. & Ad. 544.) In equity the cases have been uniformly with respect to companies not established by statute; it may be, however, as well to cite them in this place. They are:—*In re German Mining Co.*, 4 De G. M. & G. 19; *In re Magdalena Steam Navigation Co.*, Johns, 690; *Baker's Case*, 1 Dr. & Sm. 55; *Troup's Case*, 29 Bea. 353; *Hoare's Case*, 30 Bea. 225; *Pare v. Clegg*,

* As to issuing stock at a discount, see Railway Companies Act, 1867, (30 & 31 Vict. c. 127,) ss. 27-29.

29 Bea. 589; and see *Agar v. Athenæum Life Assurance Society*, 8 & 9 Vict. c. 16. 6 W. R. 277; 27 L. J. (C. P.) 95.

As to the question of interest in these cases, it has been held that although the debenture-holders might not be able to recover upon the debentures themselves, acquiescence in the payment of interest would entitle them to be paid according to the rate stipulated for in the debenture: (*In re German Mining Co.*, 4 De G. M. & G. 19; *In re Magdalena Steam Navigation Co.*, Johnson, 690; *Troup's Case*, 29 Bea. 353.)

Money borrowed by a company for the purpose of paying off, and duly applied in paying off, bonds or mortgages of the company, given or made under the statutory powers of the company, is by the Railway Companies Act, 1867 (30 and 31 Vict. c. 127), s. 26, to be deemed money borrowed within and not in excess of such statutory powers. See *post*.

Lloyd's bonds are in the form of an acknowledgment, under the seal of the company, of a debt incurred and actually due by the company to a contractor or other person for work done, goods supplied, (or otherwise, as the case may be,) with a covenant for payment of principal and interest at a future time: (*White v. Carmarthen and Cardigan Railway Co.*, 1 H. & M. 786; 33 L. J. (Ch.) 93; 12 W. R. 68; 9 L. T. N. S. 439; *Chambers v. Manchester and Milford Railway Co.*, 33 L. J. (Q. B.) 268; 5 B. & S. 588; 10 Jur. N. S. 700; 12 W. R. 980.)

In this form, issued *bonâ fide*, and not as a mere device for evading the provisions of the acts, by the issue of assignable bonds for securing money lent, there is no reason to suppose that Lloyd's bonds are an invalid security.

If the bonds are only for the purpose of giving the contractor evidence of a debt coming due to him, the Court would not say that the company had exceeded its powers, so as to justify its interference: (*White v. Carmarthen Railway Co.*, *ubi supra*, per Sir W. P. Wood, V.C.; and see *Fountaine v. Carmarthen Railway Co.*, L. R. 5 Eq. 316.)

Containing as they do a covenant for payment, they constitute a specialty debt upon which judgment may be obtained and execution issued; thus placing the holder in the position of a judgment creditor, ranking with all other judgment creditors of the company, whose rights and remedies are explained below, (pp. 48, 49, *post*.)

But where the issue of the bonds has not been for the payment of a debt actually due, but as a security for advances to be made, they have been decided to be illegal at law. *Chambers v. The Manchester and Milford Co.*, 33 L. J. (Q. B.) 268; 12 W. R. 980; 10 Jur. N. S. 700; where it was decided that the provision of this section coupled with 7 & 8 Vict. c. 85, s. 19, impliedly prevent the company from borrowing money in any other way than by mortgage. The special act of the company in that case empowered the company to raise a capital of £550,000, and a further sum not exceeding £180,000, when and not before the whole of the capital had been subscribed for, and one-half paid up. When part only had been subscribed for, the directors issued Lloyd's bonds to discharge the liability of their chairman on a promissory note signed by him, on the security of which a bank had advanced

Payment of interest in these cases.

Money borrowed for paying of bonds on mortgages to be deemed not in excess of statutory powers.

Lloyd's bonds: their form.

When valid.

As evidence of a debt.

They constitute a specialty debt.

When invalid.

8 & 9 Vict. c. 16. the sum of £10,000, which had been expended upon claims against the company, and in the purchase of lands. In an action brought on one of these bonds it was held that their issue was illegal, and that the company could not recover.

Where a railway company were sued by the assignee of a Lloyd's bond given by them to their contractor, and compromised the action before judgment by a transfer of all their rolling-stock to the plaintiff as security for money advanced by him, it was held that, on the trial of an interpleader issue between the plaintiff and an execution creditor of the company, who had taken the rolling-stock in execution, no evidence was admissible to show the illegality of the bond in its inception, on the ground of its not having been given for work done: (*Blackmore v. Yates*, L. R. 2 Exch. 225; 36 L. J. (Exch.) 121; 15 W. R. 750.)

Irregular sealing of Lloyd's bond.

Where the directors of a company were by their special act empowered to make contracts under seal, and three were to be a quorum, and a Lloyd's bond had been sealed with the company's seal, with the consent of three directors given singly at different times, it was held that the seal had been affixed without lawful authority, and the company were therefore not liable on the bond: (*D'Arcy v. Tamar, &c., Railway Co.*, 2 L. R., 2 Exch. 158; 14 W. R. 968; 14 L. T. N. S. 626.)

Cases in equity.

In equity, there are two decisions of Sir W. P. Wood, V.C., bearing upon this matter.

White v. Carmarthen and Cardigan Railway Co.

In one case, in which Lloyd's bonds had been issued in order to meet the deposit required upon the introduction of a bill for obtaining further borrowing powers, his Honour held that the Court could not interfere, because in the first place the bonds contemplated repayment at a fixed time out of the money which would be raised under the powers to be granted by the act, which he did not consider to be a fraud upon Parliament; and in the next place, that even if the bonds were invalid, it was for the shareholders (according to the principle laid down in *Foss v. Harbottle*, 2 Hare, 461) to protect themselves, the Court refusing to interfere in matters appertaining to the internal arrangements of a company, although it might have prevented the transaction by injunction at an earlier period of the transaction: (*White v. Carmarthen and Cardigan Railway Co.*, 1 H. & M. 786; 33 L. J. (Ch.) 93; 12 W. R. 68; 9 L. T. N. S. 439.)

Rushdall v. Ford.

And in another case his Honour allowed a demurrer by certain directors to a bill seeking to make them personally liable upon Lloyd's bonds issued by them, and accepted by the plaintiff, after full opportunity for him to examine into the validity of the security he was about to take for the money he was advancing. The ground of the decision was not, indeed, the validity of the issue, but merely the fact of the acceptance of the bonds by the plaintiff, who must be taken to have known the law which rendered the security in that form invalid: (*Rushdall v. Ford*, L. R. 2 Eq. 750; 14 L. T. N. S. 790; 14 W. R. 950.)

Form of Lloyd's bond.

The following is a valid and usual form of Lloyd's bond:—

"The Railway Company do hereby acknowledge that they stand indebted to A. B. of, &c., Contractor for Public Works, in the sum of £ , for works executed and materials provided

by the said A. B. for the said company, for the purposes of their 8 & 9 Vict. c. 16. railway, as certified by the engineer of the said company. And the said company do hereby, for themselves, their successors, and assigns, covenant with the said A. B., his executors, and administrators, to pay to him, his executors, administrators, or assigns, the said sum of £ , at the expiration of years from the day of the date hereof, together with interest, at the rate of £ per cent. per annum, payable half-yearly upon the said sum, or so much thereof as shall for the time being remain unpaid, until payment thereof. Given under the common seal of the company, this day of , in the year of our Lord "

L. S.

(b) Where, after the passing of the Lands Clauses Acts Amendment Act, 1860, (23 & 24 Vict. c. 106,) the promoters of the undertaking agree with any person under the powers of the Lands Clauses Act, 1845, or of that Act only, for the purchase of any lands in consideration of the payment of a rent-charge, annual feu-duty, or ground-annual, the powers of the promoters of the undertaking for borrowing money shall be reduced by an amount equal to twenty years' purchase of any rent-charge, annual feu-duty, or ground-annual, so for the time being payable; s. 5.

Rent charges to go in diminution of borrowing powers.

(c) There is now, since the repeal of the Usury Laws by 17 & 18 Vict. c. 90, no restriction as to the rate of interest upon loans, unless a certain rate be provided for by act of Parliament.

No restriction as to interest on loans.

As to loans by the Exchequer Loan Commissioners, under the acts empowering them to advance money for the execution of certain public undertakings, see *South-Eastern Railway Co. v. Jortin*, 6 H. L. 425; 6 De G. M. & G. 270; 2 Sm. & G. 48.

Advances to companies by Exchequer Loans Commissioners.

With regard to the period during which arrears of interest are recoverable under the Statutes of Limitation, it was decided in one case, where turnpike tolls had been mortgaged, that such tolls were not within 3 & 4 Will. IV. c. 27, and that the limitation of six years therein provided did not apply: (*Mellish v. Brooks*, 3 Bea. 22; 4 Jur. 739.)

Statutes of Limitations with regard to interest on loans.

It seems that a debenture or mortgage should contain a covenant to pay interest; for where, in a mortgage of the tolls of a canal, there was no such covenant, it was held that the case came under the 3 & 4 Will. IV. c. 27, s. 42, and not under 3 & 4 Will. IV. c. 42, s. 2, which applies to actions of debt only; and as there was no covenant, that provision could not apply, and the interest could be recovered for six years only: (*Hodges v. Croydon Canal Co.*, 3 Bea. 88.)

Covenant to pay interest.

(d) It has been held that where the mortgage or debenture charges the "undertaking" only, future calls not being expressly included, do not pass under the security: (*Per Lord Cairns, L. J., in Gardner v. London, Chatham, and Dover Railway Co.*, L. R. 2 Ch. App. 201, 210.)

Future calls: not pass unless expressly included.

And where the deed of settlement of an insurance company authorised the raising of money upon the security of the "funds

Do not pass under the words "funds and property."

- 8 & 9 Vict. c. 16. and property" of the company, future calls were held not to pass (*Ex parte Stanley*, 33 L. J. (Ch.) 535.)
- "Lands, tenements, and estate of the company and all their undertaking." Unpaid existing calls and future calls were in like manner held not to pass under a debenture charging the "lands, tenements, and estate of the said company, and all their undertaking:" (*King v. Marshall*, 33 Bea. 565; 34 L. J. (Ch.) 163.)
- Surplus lands not included in mortgage of the undertaking in the form in schedule C. By a mortgage in the form given in Schedule (C.) the surplus lands of a railway company do not pass so as to give the mortgagee a specific charge upon them, or the moneys produced by the sale of them, nor a right to have a receiver of such sale-moneys, or of the interim rents of the lands, appointed by the Court of Chancery: (*Gardner v. London, Chatham, and Dover Railway Co.*, L. R. 2 Ch. App. 201; 15 W. R. 325; 36 L. J. (Ch.) 323; 15 L. T. N. S. 532.)
- It includes the works, rails, and land; It was held in another case that a mortgage of the "undertaking" in the same form includes the interest of the company in the works, rails, and land, as incident to the working of the railway which is authorised to be made: (*Legg v. Matheson*, 2 Giff. 71; 29 L. J. (Ch.) 385.)
- And stations. Station-houses were considered, in the case last cited, to form part of the works, and therefore to be comprised in the mortgage.
- Debentures are subject to Statute of Mortmain, unless in the form of a mere promissory note. As to the property of railway companies which is liable to execution upon judgment debts, see the notes to ss. 42-54, *post*.
- Where undertaking and tolls mortgaged. It seems that railway debentures would, if in the form of a promissory note, involving a mere personal obligation, not fall within the scope of the Mortmain Act (9 Geo. III c. 36): (*Ashton v. Lord Langdale*, 4 De G. & Sm. 402; 20 L. J. (Ch.) 234; 15 Jur. 863; *Myers v. Perigal*, 2 De G. M. & G. 599; 16 Sim. 533; 22 L. J. (Ch.) 431.)
- Canal bonds. But if the undertaking and tolls are mortgaged by the debenture, there is an immediate charge upon hereditaments—namely, the tolls and the land from which the tolls proceed, and in this case the Mortmain Act applies: (*Ashton v. Lord Langdale*, *ubi supra*; *Langham's Will*, 10 Hare, 446; *Finch v. Squire*, 10 Ves. 40.) In *Walker v. Milne*, (11 Bea. 507,) however, Lord Langdale held that canal bonds were not an interest in land within the statute. A contrary opinion of Vice-Chancellor Wood is to be found in the case of *Langham's Will*, 10 Hare, 446.
- Liability of executors and trustees for loss by non-conversion of railway mortgages. Although, if an executor or trustee find amongst the property of his testator securities in the nature of railway mortgages or debentures, it does not seem that he would be personally liable for loss if he left such investment unconverted, (*Robinson v. Robinson*, 1 De G. M. & G. 247;) still a power to sell and invest on "real securities" will not authorise an advance of money for a term of years to a railway company upon the security of the undertaking, future calls, rates, tolls, &c., since it is not (as laid down in *Dee v. Myatt v. St. Helen's, &c., Railway Co.*, 2 Q. B. 364; 2 R. C. 756) a security which can be enforced by ejectment: (*Mant v. Leith*, 15 Bea. 524; 21 L. J. (Ch.) 719; 16 Jur. 302;) nor, for the same reason, will a trust to invest "upon the security by way of mortgage of any freehold, copyhold, or leasehold hereditaments in England or Wales," warrant an investment in railway mortgages or debenture stock: (*Mortimore v. Mortimore*, 4 De G. & J. 472; 28 L. J. (Ch.) 558.)
- Nor upon a power to invest in "freehold, copyhold, or leasehold hereditaments."

any lease granted or made to the company which is to rank in priority to, or *pari passu* with, the interest or dividends on the mortgages, bonds, and debenture stock; nor is anything therein before contained to affect any claim for land taken, used, or occupied by the company for the purposes of the railway, or injuriously affected by the construction thereof, or by the exercise of any of the powers conferred on the company.

It had been decided previously to the passing of this general act, under a similar statute, that a mortgagee could not maintain an action of ejectment, even where the mortgage purported to convey "the said undertaking, and all the estate, right, title, and interest of the company in and to the same: (*Doe d. Myatt v. St Helen's and Runcorn Gap Railway Co.*, 2 Q. B. 364; 2 R. C. 756.) See, however, the observation of Lord Chelmsford on this case in *Wickham v. New Brunswick and Canada Railway Co.*, L. R. 1 P. C. 64; 12 Jur. N. S. 34; 35 L. J. (P. C.) 6; 14 W. R. 251; and it was held in the case of *Hart v. Eastern Union Railway Co.*, 7 Exch. 246; 6 R. C. 818 in error; 22 L. J. (Exch.) 20; that an instrument similar in form to that given in schedule (C.) of this act did not mortgage the land of the railway. This case also decided, that where the repayment of the mortgage debt is secured by an instrument which on its face imports a covenant for repayment, and a date is fixed for the repayment, and it be not duly repaid, an action against the company is maintainable. See *ante*, pp. 41, 42.

Interest is recoverable in an action of covenant by a debenture holder, though it be not stipulated for in the bond: (*Price v. Great Western Railway Co.*, 16 M. & W. 244; 4 R. C. 707.) As to issuing execution, see *Bolekov v. Herne Bay Pier Co.*, 1 E. & B. 74; 7 R. C. 231.

Where a company gave a bond purporting to be for a sum borrowed and advanced conformably to the act, a plea that it was executed colourably, and that the money was not, in fact, borrowed or lent for the purpose of the statute, as the obligee well knew, was held bad, no fraud or injury to the shareholders of the company being shown: (*Hill v. Manchester and Salford Waterworks Co.* 2 L. & Ad. 544. And see for a plea of fraud and want of authority in company to make the bond on which action was brought, *Horton v. Westminster Improvement Commissioners*, 21 L. J. (Exch.) 297; 7 Exch. 780.)

As to the invalidity of debentures with blanks for payee's name, and their admissibility in evidence, see *Enthoven v. Hoyle*, 21 L. J. (C. P.) 100; 13 C. B. 373.

As to whether property acquired by a railway company subsequently to a mortgage of the line "and all the estate, chattels, and effects of the company which they are seised of and entitled to, or may during the continuance of the security be seised of or entitled to," is affected by the mortgage, see *Willink v. Andrews*, 18 Ir. C. L. Rep. 201.

Where bonds were issued by a company to receive repayment of advances, by the terms of which all holders were to be paid *pari passu*, and they suffered judgment by default in an action brought on one of them, it was held that the debt so secured was not a debt which could be attached under the clause relating to garnishees in

Clauses Act and Lands Clauses Amendment Act, 1860.

And sums payable under leases to the company.

And compensation for land and injury.

Rights of mortgagees at law: no ejectment.

Mortgage in form of schedule (C.) does not mortgage the land.

Action for non-payment of mortgage debt.

Recovery of interest by debenture-holders. Issuing execution.

Allegations of fraud in issue of bonds.

Plea of fraud and want of authority.

Debentures in blank.

Charge of future acquired property.

Attachment by garnishee order.

s. 9 Vict. c. 13. the 17 & 18 Vict. c. 125; s. 16: (*Kennett v. Westminster Improvement Commissioners*, 11 Exch. 349; 25 L. J. (Exch.) 97.)

Effect of action by bond-holder upon rights of others.

Under a similar act prior to the general act, it was held that the intention that no person should obtain a preference by reason of the priority of the date of his security, was not defeated by an action brought by a bond-holder in the bond: (*Hill v. Manchester and Salford Waterworks Co.*, 2 B. & Ad. 544.)

A mortgagee must in equity sue on behalf of himself and all others in the same interest.

A mortgagee seeking to establish or enforce his debt, or to obtain the appointment of a receiver, must, in equity, sue on behalf of himself and all the other mortgagees in the same interest or class with himself: (*Mellish v. Brooks*, 3 Bea. 22; *Potts v. Warwick and Birmingham Canal Navigation Co.*, Kay 142; *Fripp v. Chard Railway Co.*, 11 Hare, 241; *Legg v. Mathieson*, 2 Giff. 71; 29 L. J. (Ch.) 385;) and where such a suit has been instituted, a mortgagee, holding a mortgage in the statutory form of a debenture of the company, is not entitled to sue out execution on a judgment which he has obtained at law, in an action on the same instrument, except as a trustee for himself and all other debenture-holders entitled to be paid *pari passu* with him: (*Bowen v. Brecon Railway Co.*, *Ex parte Howell*, L. R. 3 Eq. 541; V. C. W.)

And cannot sue out execution, except as a trustee for himself and all others in same interest.

Inquiries consequently directed.

And that being the opinion of the Court, an inquiry was directed upon the petition for leave to issue execution, and in the suit, whether it would be for the benefit of the debenture-holders that any proceedings should be taken by the receiver for the purpose of making such judgment available for the benefit of such creditors: (*Ibid.*, p. 551.)

The principle of this case is based upon the cases at law of *Fairtitle v. Gilbert*, 2 T. R. 169; and *Kennett v. Westminster Improvement Commissioners*, 11 Ex. 349; 25 L. J. (Exch.) 97.

Rights of judgment creditors in equity.

With respect to the rights of judgment creditors to issue execution against the property of the railway company, where there are subsisting mortgages and debentures charging the undertaking and tolls of the company, it may be stated that, since no judgment creditor can under his judgment take a greater interest than his debtor has in his own property: (*Whitworth v. Gaugain*, 3 Hare, 425; *Potts v. Warwick and Birmingham Canal Navigation Co.*, Kay, 142; *Ames v. Trustees of the Birkenhead Docks*, 20 Bea. 332; and *per Lord Chelmsford, C.*, in *Wickham v. New Brunswick and Canada Railway Co.*, L. R. 1 P. C. 64, 75); any interest which a judgment creditor can have in such property must be subordinate to that of the mortgagees: (*Legg v. Mathieson*, 2 Giff. 71; 29 L. J. (Ch.) 385; *Ames v. Trustees of the Birkenhead Docks*, 23 Bea. 332; *Wildy v. Mid. Hants Railway Co.*, 3 W. N. 61.)

Cannot take greater interest than debtor had.

And therefore subject to mortgages.

Similarly where a judgment creditor applied for a receiver in the case of a company who had opened their line, but had concluded an agreement with another company who were to work the line, a receiver was appointed without prejudice to the working agreement: (*Contract Corporation v. Tottenham and Hampstead Junction Railway Co.*, 3 W. N. 242.)

Receiver's right prior to claim of judgment creditor.

And where a receiver has been appointed, his right is prior to the claim of a judgment creditor under an elegit, whose whole interest in the land can be that only which subsists subject to the right of the receiver, and to the provisions of the railway acts: (*Potts v. War-*

R. C. 501; *Perkins v. Deptford Pier Co.*, 13 Sim. 277; 3 R. C. 95. elegit.

er an elegit so obtained it seems that the chattels and rolling-stock could (in cases not coming under the Railway Companies Act, 1867, s. 4) be seized: (*Gardner v. London, Chatham, and Dover Ry. Co.*, L. R. 2 Eq. 201; *Bowen v. Brecon Railway Co.*, L. R. 41, 548, *per* Sir W. P. Wood, V. C.)

now, under the fourth section of the Railway Companies Act, 1867, (30 & 31 Vict. c. 127,) the engines, tenders, carriages, machinery, tools, fittings, materials, and effects, constituting the rolling-stock and plant used or provided by a company for the traffic on their railway, or of their stations, or works, are protected from seizure under s. 4 of the Companies Act, 1867.

is not, after their railway or any part thereof is open for traffic, liable to be taken in execution at law or in equity, at any time after the passing of the act, *i.e.*, 20th of August 1867, and the 1st of September 1868, (extended to 1st September 1870 by the Act of 32 Vict. c. 79,) where the judgment on which execution is recorded in an action on a contract entered into after the passing of the act, or in an action not on a contract, commenced after the passing of the act; and a receiver and manager may be appointed. See *post*, the Railway Companies Act, 1867, s. 7.

section 5 provides that if, in any case where property of a company has been taken in execution, a question arises whether or not the company is liable to be so taken notwithstanding the act, the same question shall be heard and determined on an application by either party by the Court, in a summary way, in the Court out of which the execution was issued, or if the Court is one of the Superior Courts of Law, by a judge of any one of those Courts, and such determination shall be final and binding.

In a recent case of *Blackmore v. Yates*, (36 L. J. (Exch.) 121; 15 W. R. 750,) the question of the legality of an assignment of all the rolling-stock was discussed, but not decided; it was held that such an assignment in lieu of a judgment in execution on a Lloyd's bond was not in issue on an interpleader issue between the assignee of the rolling-stock and a judgment creditor who had seized the stock in execution.

What the mortgagee himself is entitled to take is the tolls of the undertaking, the word undertaking being used in the sense laid down in *The tolls may be taken in execution.*

8 & 9 Vict. c. 16. The works, rails, fixtures, &c., which form part of the completed work of the undertaking are not liable to be seized by judgment creditors; and an injunction to that effect would be granted: (*Legg v. Mathieson*, 2 Giff. 71; 29 L. J. (Ch.) 385; *Gardner v. London, Chatham, and Dover Railway Co.*, L. R. 2 Ch. 201.)

But not the undertaking itself.

No priority as between debenture-holders, or between one who has obtained judgment, and the rest.

As between debenture-holders and one of their number who has obtained judgment in an action on his debenture, the latter does not thereby obtain any priority over the other debenture-holders, since the words of s. 42 expressly exclude any preference in respect of priority of time; and the meaning of the Legislature was that "parity of possession should be given to parity of security:" (*Bowen v. Brecon Railway Co.*, L. R. 3 Eq. 541.)

No priority by taking mortgage in addition to debenture.

Nor will a mortgage, taken in addition to a debenture, give the holder of such debenture any priority where the Act provides that debenture-holders shall be paid *pari passu*: (*De Winton v. Mayor, &c., of Brecon*, 28 Bea. 200; 5 Jur. N. S. 882; 28 L. J. (Ch.) 600.)

As to the mode in which judgments may be made available against the land:—

23 & 24 Vict. c. 38. By s. 1 of 23 & 24 Vict. c. 38, no judgment is a charge upon land, unless execution have issued, and the writ upon which execution has issued registered.

27 & 28 Vict. c. 112. By 27 & 28 Vict. c. 112, no judgment is a charge upon land until the land has been actually delivered in execution by elegit, and the writ registered; and by s. 4 of the same act, every creditor to whom any land of his debtor shall have been actually delivered in execution, by virtue of any judgment, and whose writ or other process of execution shall have been duly registered, is entitled forthwith, or at any time afterwards, while the registry of such writ or process continues in force, to obtain from the Court of Chancery, upon petition in a summary way, an order for the sale of his debtor's interest in such land.

On petition.

To be served on debtor only.

The petition need not be served upon any person besides the debtor.

Inquiries directed on hearing of petition.

Upon such petition the Court directs all such inquiries to be made as to the nature and particulars of the debtor's interest in such land, and his title thereto, as appear to be necessary or proper.

Application of Act to creditors of railway companies.

With regard to the applicability of the provisions of this Act to the case of railway companies upon petitions for sale under s. 4, the Court has in every case directed inquiries to be made: (*In re Hull and Hornsea Railway Co.*, L. R. 2 Eq. 262; *In re Bishop's Waltham Railway Co.*, L. R. 2 Ch. 382; *Gardner v. London, Chatham, and Dover Railway Co.*, *Ex parte Grissell*, L. R. 2 Ch. 385; and see *In re Ventnor Harbour Co.*, *Ex parte Fleming*, 1 W. N. 19; 13 L. T. N. S. 793.)

Re Bishop's Waltham, R. C.

and in the case of *In re Bishop's Waltham Railway Co.*, (*subi supra*), when by the inquisition it was found that the company had no lands within the bailiwick, except the railway, the station, and goods shed, Sir G. J. Turner, L. J., observed that if the property of the debtor which is taken in execution is not capable of being sold, he doubted whether the case came within the act; that, at all events, it was going too far to say that the Court is bound to order a sale when it does not appear what saleable interest there is, or whether the company have any saleable interest; and the only inquiry directed was what the interest of the company was in the property found by the inquisition.

But where the land of the company had been already exhausted, s. 8 & 9 Vict. c. 10. but not delivered in execution, under two prior writs of elegit, a petition by a third judgment creditor, who had also sued out an elegit, was dismissed with costs, since he could not have the benefit of s. 4 of the act until the prior elegits had been got rid of: (*In re Cowbridge Railway Co.*, 3 W. N. 14.)

Where there are prior elegits.

Where it had been decided that certain superfluous lands (situate in a town, and therefore not subject to any right of pre-emption) were not included in the security of a debenture, (*Gardner v. London, Chatham, and Dover Railway Co.*, L. R. 2 Ch. 201,) and a judgment creditor, who had extended certain of such lands, had applied by petition for an order for sale, inquiries were directed in the following form:—

"1. An inquiry what is due to the petitioner under or by virtue of his judgment. Form of inquiries directed.

"2. An inquiry what lands and property have been extended under or by virtue of the writ of elegit in the petition mentioned, and what are the nature and particulars of the interest of the said company in such lands and property, and of their title thereto; and whether any, and which, of such lands are superfluous, and not required for the purposes of the undertaking of the said company. What lands extended, and the nature thereof.

"3. An inquiry whether there are any, and, if any, what, liens, charges, or incumbrances upon the said lands, or any, and what part thereof, and what are their priorities, and what is due on account thereof respectively." (*Ex parte Grissell*, L. R. 2 Ch. 385.) As to incumbrances.

And where there are writs of *fi. fa.* issued, but not in the hands of the sheriff, a writ of elegit subsequently issued, but actually in the hands of the sheriff, will be first executed: (*Guest v. Cowbridge Railway Co.*, 3 W. N. 235.) Writs in hands of sheriff first executed.

Where, in a late case, judgment had been entered up on an elegit, registered under s. 4, in which the sheriff returned *nulla bona*, and the land of the company had already been extended under a former elegit, it was held that the prior elegit must be got rid of, and that the subsequent judgment creditor might then apply to the Court for a sale: (*In re Cowbridge Railway Co.*, L. R. 5 Eq. 413.)

And where a judgment creditor had sued out an elegit under 1 & 2 Vict. c. 110, the company having no land except that on which the railway was constructed, and he filed a bill for an account of what was due to him, and for a sale of the lands, the Master of the Rolls refused to make an order for sale, but directed inquiries similar to those directed in the cases cited above: (*Furness v. Caterham Railway Co.*, 25 Bea. 614; 27 L. J. (Ch.) 771.) Under 1 & 2 Vict. c. 110.

XLIII. No such mortgage (although it should comprise future calls on the shareholders) shall, unless expressly so provided, preclude the company from receiving and applying to the purposes of the company any calls to be made by the company. Application of calls, notwithstanding mortgage.

XLIV. The respective obligees in such bonds shall, proportionally according to the amount of the moneys Rights of obligees.

8 & 9 Vict. c. 16. secured thereby, be entitled to be paid out of the tolls or other property or effects of the company (a), the respective sums in such bonds mentioned, and thereby intended to be secured, without any preference (b) one above another by reason of priority of date of any such bond, or of the meeting at which the same was authorised, or otherwise howsoever.

(a) The words directing that bond creditors shall be "entitled to be paid out of the tolls or other property or effects of the company," have been held to show that the rights and remedies of such creditors are not limited to the right to be so paid, but that they are entitled to proceed against the property and effects of the company in common with the general creditors, and to issue execution against the company under s. 36 of the Companies Clauses Act, 1845: (*Russell v. East Anglian Railway Co.*, 3 M.N. & G. 125; 6 R. C. 501; and see *Gardner v. London, Chatham, and Dover Railway Co.*, L. R. 2 Ch. 201, 216. But see the notes to s. 36, *ante*, p. 34, and s. 4 of the Railway Companies Act, 1867, *post*.)

(b) There is no priority or preference between bond creditors, or between a bond creditor who has obtained judgment and all other bond creditors, because, since a bond is a thing only to be secured by a judgment, unless a special receiver be appointed under the act, it would clearly be against the very words of the section to say that any bond creditor is to be preferred to another in respect of his judgment: (*Bowen v. Brecon Railway Co.*, L. R. 3 Eq. 541, 548.)

Register of mortgages and bonds (a).

XLV. A register of mortgages and bonds shall be kept by the secretary, and within fourteen days after the date of any such mortgage or bond an entry or memorial, specifying the number and date of such mortgage or bond, and the sums secured thereby, and the names of the parties thereto, with their proper additions, shall be made in such register; and such register may be perused (b) at all reasonable times by any of the shareholders, or by any mortgagee or bond creditor of the company, or by any person interested in any such mortgage or bond, without fee or reward.

Effect of registration where debentures unlawfully issued.

(a) Where debentures have been issued *malâ fide*, and contrary to the powers of the company, it seems that the registration of such debentures will not alter the equities of the shareholders unless they have acquiesced in the issue of the debentures: (*Athenæum Life Assurance Co. v. Pooley*, 28 L. J. (Ch.) 119.)

Perusal of register.

(b) As to the circumstances under which there is a right to inspect the register, see *Birmingham and Thames Junction Railway Co. v. White*, 1 Q. B. 282; 2 R. C. 863; *Pontet v. Basingstoke Co. Co.*, 2 Bing. N. C. 370; *R. v. Great Western Railway Co.*, 13 L. 256; and as to the issuing of a mandamus to allow inspection, *see Reg. v. Wiltz, &c., Canal Co.*, 3 A. & E. 477.

Mandamus to allow inspection.

XLVI. Any party entitled to any such mortgage or bond may from time to time transfer his right and interest therein to any other person (a); and every such transfer shall be by deed duly stamped (b), wherein the consideration shall be truly stated; and every such transfer may be according to the form in the schedule (E.) to this act annexed, or to the like effect.

Transfers of mortgages and bonds to be stamped.

(a) The holder of a bond transferred to him in pursuance of this and the following section must sue upon it in his own name, the object of the Legislature being to make such bonds negotiable to the extent of transferring all the transferor's title or interest in the bond: (*Vertue v. East Anglian Railway Co.*, 5 Exch. 280; 19 L. J. (Exch.) 235;) but the assignee of a Lloyd's bond must sue in the name of the obligee, and not in his own, it being a chose in action not assignable at law: (*Williams v. Sidmouth Railway and Harbour Co.*, L. R. 2 Exch. 284; 36 L. J. (Ex.) 184; 15 W. R. 995; 16 L. T. N. S. 425.)

Transferee to sue in his own name.

Lease, assignees of Lloyd's bonds.

(b) Transfers of bonds and mortgages given by public companies for money which by their Acts of Parliament they may be authorised to borrow are by 16 & 17 Vict. c. 59, s. 14, exempted from stamp duty, on the original bond or mortgage being stamped, in the first instance, with three times the amount of the *ad valorem* duty over and above such duty.

Exemption from stamp on transfers, 16 & 17 Vict. c. 59, s. 14.

XLVII. Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the secretary, and thereupon the secretary shall cause an entry or memorial thereof to be made in the same manner as in the case of the original mortgage; and after such entry every such transfer shall entitle the transferee to the full benefit of the original mortgage or bond in all respects; and no party, having made such transfer, shall have power to make void, release, or discharge the mortgage or bond so transferred, or any money thereby secured; and for such entry the company may demand a sum not exceeding the prescribed sum, or, where no sum shall be prescribed, the sum of two shillings and sixpence; and until such entry the company shall not be in any manner responsible to the transferee in respect of such mortgage.

Transfers of mortgages and bonds to be registered.

XLVIII. The interest of the money borrowed upon any such mortgage or bond shall be paid at the periods appointed in such mortgage or bond, and if no period be appointed, half-yearly, to the several parties entitled thereto,

Payment of interest on moneys borrowed.

8 & 9 VICT. c. 16. — and in preference to any dividends payable to the shareholders of the company.

Transfers of interest to be stamped. XLIX. The interest on any such mortgage or bond shall not be transferable, except by deed duly stamped.

Repayment of money borrowed at a time fixed. L. The company may, if they think proper, fix a period for the repayment of the principal money so borrowed, with the interest thereof, and in such case the company shall cause such period to be inserted in the mortgage deed or bond; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to such mortgage or bond; and if no other place of payment be inserted in such mortgage deed or bond, such principal and interest shall be payable at the principal office or place of business of the company.

Repayment of money borrowed where no time fixed. LI. If no time be fixed in the mortgage deed or bond for the repayment of the money so borrowed, the party entitled to the mortgage or bond may, at the expiration or at any time after the expiration of twelve months from the date of such mortgage or bond, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months previous notice for that purpose; and in the like case the company may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or bond creditor shall be delivered to the secretary or left at the principal office of the company, and if given by the company shall be given either personally to such mortgagee or bond creditor, or left at his residence, or if such mortgagee or bond creditor be unknown to the directors, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the *London* or *Dublin Gazette*, according as the principal office of the company shall be in *England* or *Ireland*, and in some newspaper as after mentioned.

Interest to cease on expiration of notice to pay off mortgage or bond. LII. If the company shall have given notice of their intention to pay off any such mortgage or bond at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease

of interest, or the arrears of principal and interest, due on mortgages, by the appointment of a receiver* (a), within thirty days after the interest accruing upon such mortgage has become payable, and, after demand in writing, the same be not paid, the mortgagee without prejudice to his right to sue for the interest or in any of the superior courts of law or equity, may, on the appointment of a receiver, by an application to the court as herein after provided; and if within six months after the principal money owing upon any such mortgage has become payable, and after demand thereof in writing, the same be not paid, the mortgagee, without prejudice to his right to sue for such principal money, together with all interest thereon, in any of the superior courts of law or equity, may, if his debt amount to the prescribed sum or if his debt does not amount to the prescribed sum, in conjunction with other mortgagees whose debts are being so in arrear, after demand as aforesaid, shall, together with his, amount to the prescribed sum, require the appointment of a receiver, by an application to be made to the court as herein after provided.

be enforced by
appointment of
a receiver.

Arrears of prin-
cipal and in-
terest.

As to the jurisdiction of the Court of Chancery to appoint a receiver at the suit of mortgagees of tolls, &c., it has long been held that it possesses such jurisdiction independently of any Act of Parliament. See *De Winton v. Mayor, &c., of Brecon*, (25 Bea. 533; (Ch.) 598; 5 Jur. N. S. 882,) where an act authorising the creation of a market omitted any power to appoint a receiver: *v. East Anglian Railway Co.*, 3 M.N. & G. 125, 6 R. C. 101; *and Crewe v. Edleston*, 1 De G. & J. 93; and see *Hopkins v. Mersey and Birmingham Canal Co.*, 3 W. N. 171.) Nor is the jurisdiction of the Court of Chancery taken away by the fact that the appointment of a receiver shall be made by a judge.

Jurisdiction in
Chancery to ap-
point a receiver.

Notwithstanding

54 *Companies Clauses Consolidation Act, 1845, s. 53.*

8 & 9 VICT. c. 16. 2 W. N. 130; and see *Fripp v. Chard Railway Co.*, 11 Hare, 241; Seton on Decrees, 3d ed., 1034; Daniell's Chancery Practice, c. xxxii. p. 1552, *et seq.*)

Appointment of chairman as receiver. There is no objection to the appointment of a chairman of a board of dock trustees "without salary, to pay balances into Court, after paying working expenses and interest on mortgages, and not to account further until further order:" (*Ames v. Trustees of Birkenhead Docks*, 20 Bea. 332;) nor to an order appointing a receiver who should "pay the costs, charges, and expenses of carrying on the business of the company, and the interest of the mortgages created by them, to be verified by affidavit:" (*Potts v. Warwick and Birmingham Canal Navigation Co.*, Kay, 142.)

Duties of receiver.

Court of Chancery will not appoint a manager. But the Court of Chancery has in several cases refused to appoint a manager, or give to a receiver any powers which the company alone can exercise under their Act of Parliament. See *Russell v. East Anglian Railway Co.*, 3 M.N. & G. 125; 6 R. C. 501; *Potts v. Warwick and Birmingham Canal Navigation Co.*, Kay, 142; *Fripp v. Chard Railway Co.*, 11 Ha. 241; and see *per Lord Cairns L. J.* in *Gardner v. London, Chatham, and Dover Railway Co.*, L. R. 2 Ch. 201, 211, 213, which was followed in this respect by Sir W. P. Wood, V.C., in *Bowen v. Brecon Railway Co.*, L. R. 3 Eq. 541, 545.

Receiver and manager under the Railway Companies Act, 1867, s. 4. Now, however, under the Railway Companies Act, 1867, (30 & 31 Vict. c. 127,) the fourth section, which provides for the exemption, until the 1st of September 1868,* of rolling-stock and plant from execution issued upon judgments obtained in actions on contracts entered into, or in actions not *ex contractu* commenced, after the passing of the act, enacts, that the person who has recovered such judgment may obtain the appointment of a receiver, and, if necessary, of a manager of the undertaking of the company, on application by petition in a summary way to the Court of Chancery in England or in Ireland, according to the situation of the railway of the company; and all money received by such receiver or manager shall, after due provision for the working expenses of the railway, and other proper outgoings in respect of the undertaking, be applied and distributed under the direction of the Court, in payment of the debts of the company and otherwise, according to the rights and priorities of the persons for the time being interested therein; and, on payment of the amount due to every such judgment creditor as aforesaid, the Court may, if it think fit, discharge such receiver or such receiver and manager.

His duties.

Discharge of receiver or receiver and manager.

Powers of receiver.

Receiver of chattels in addition to a receiver of tolls.

Receiver under 26 & 27 Vict. 118.

A receiver cannot have such powers entrusted to him, the omission of the exercise of which might make him liable to proceedings by the Attorney-General to a mandamus, or the like: (*De Winton v. Mayor, &c., of Brecon*, 25 Bea. 533; 28 L. J. (Ch.) 598; 5 Jur. N. S. 882.)

The Court of Chancery has, even after a receiver of the tolls has been appointed, appointed a receiver of the chattel property of a railway company, on a motion by a debenture-holder, where the company had by a deed assigned their rolling-stock and chattels to trustees for the general benefit of their creditors: (*Waterlow v. Sharp*, 2 W. N. 64.)

As to the appointment of receivers in respect of debenture or pre-

* Extended to the 1st September 1870, by 31 & 32 Vict. c. 79.

ference stock, see the Companies Clauses Act, 1863, (26 & 27 Vict. 8 & 9 Vict. c. 16. c. 118,) ss. 25, 26, *post*.

LIV. Every application for a receiver in the cases aforesaid shall be made to two justices,* and on any such application it shall be lawful for such justices, by order in writing, after hearing the parties, to appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the tolls or sums aforesaid, be fully paid; and upon such appointment being made all such tolls and sums of money as aforesaid shall be paid to and received by the person so to be appointed; and the money so to be received shall be so much money received by or to the use of the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver shall have been appointed; and after such interest and costs, or such principal, interest, and costs, have been so received, the power of such receiver shall cease.

Appointment of receiver.

The jurisdiction of the Court of Chancery to appoint a receiver independently of any Act of Parliament is not affected by the provision of this section, that two justices are to appoint receivers under the Act: (*Fripp v. Chard Railway Co.*, 11 Hare, 241.)

Jurisdiction in equity to appoint receivers.

LV. At all seasonable times the books of account of the company shall be open to the inspection of the respective mortgagees and bond creditors thereof, with liberty to take extracts therefrom, without fee or reward.

Access to account books by mortgagees.

As to the inspection of books of account, see *Reg. v. Great Western Railway Co.*, 13 L. T. 256, and the note to s. 45, *ante*, p. 50.

Inspection of accounts.

CONVERSION OF BORROWED MONEY INTO CAPITAL.

And with respect to the conversion of the borrowed money into capital, be it enacted as follows:

LVI. It shall be lawful for the company, if they think fit, unless it be otherwise provided by the special act, to raise the additional sum so authorised to be borrowed, or

Power to convert loan into capital

* The "judicial factor," who according to the Scotch law is the officer corresponding to the receiver above mentioned, is, by s. 57 of the Scotch Land Clauses Consolidation Act, 1845, (8 & 9 Vict. c. 17,) to be appointed by the Court of Session.

s. 8 & 9 VICT. c. 16. any part thereof, by creating new shares (a) of the company, instead of borrowing the same, or, having borrowed the same, to continue at interest only a part of such additional sum, and to raise part thereof by creating new shares; but no such augmentation of capital as aforesaid shall take place without the previous authority of a general meeting of the company.

New shares and stock, 26 & 27 VICT. c. 118, s. 12, Part II.

Ss. 16-23, if all not issued, unissued new shares or stock may be cancelled.

If ordinary stock or shares at a premium, new stock or shares may be apportioned amongst original shareholders.

Vest by acceptance in prescribed time.

Purposes for which new shares issued.

Not to pay expenses of obtaining an extension act.

New shares to be considered same as original shares (a).

Power to issue shares or stock at a discount.

(a) As to the creation of new shares or stock, it is enacted by s. 12 of the Companies Clauses Act, 1863, (26 & 27 VICT. c. 118,) that where a company, incorporated either before or after the passing of that act, is authorised by any special act incorporating the Companies Clauses Act, 1863, to issue new ordinary shares or stock, the company may, at a meeting of the company convened for the purpose, issue such new ordinary shares, of such nominal amount, and subject to the payment of calls of such amount and at such times as the company thinks fit, or such new ordinary stock as the company thinks fit; and if, after having created such new shares or new stock, the company determines not to issue the whole of the new shares or stock, they may cancel the unissued new shares or new stock, (s. 16;) and if the ordinary stock or shares is or are at a premium, the new stock or shares may be apportioned amongst the then holders of ordinary stock or shares; the offer to apportion the same is to be by letter; the new shares or stock shall vest in the shareholders or stockholders who accept the same or their nominees; a limited time for acceptance, with power to extend such time, is to be provided by the special act; and subject to the foregoing provisions, the directors may dispose of new shares or stock as they think fit, [but not at a discount,*] (s. 21.)

The purposes for which new shares may be issued must be those authorised by the company's act, and must be issued only in the mode directed by the act.

Thus, although it is lawful for any railway company, after complying with the Wharnccliffe order, to apply to Parliament for an extension act: (see *Natusch v. Irving*, 2 Coop. C. C. 358, and notes to ss. 65 and 90, *post*;) still, they cannot pay the expenses of obtaining such act by an issue of new shares: (*Vance v. East Lancashire Railway Co.*, 3 K. & J. 56. See order on injunction, *ibid.* p. 61.)

LVII. The capital so to be raised by the creation of new shares shall be considered as part of the general capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares on nonpayment of calls, or otherwise, as if it had been part of the original capital, except as to the times

* By the Railway Companies Act, 1867, (30 & 31 VICT. c. 127, ss. 27-29,) this provision as to the issue of shares or stock at a discount is repealed; and any shares forming part of the capital authorised to be raised, but not disposed of, may be issued at a discount; but shares already created, but not issued before the passing of the Act of 1867, are not to be so issued, except under the provisions of Part II. of the Act of 1863.

of making calls for such additional capital, and the amount of such calls, which respectively it shall be lawful for the company from time to time to fix as they shall think fit.

(a) Since new shares are in every way subject to the same provisions as original shares, they will, if allotted in respect of original shares in settlement, become subject to the trusts of the settlement; as also will the stock purchased with the proceeds of the sale of the new shares: (*Rowley v. Unwin*, 2 K. & J. 138.)

New shares allotted in respect of shares in settlement are subject to the trusts.

And the tenant for life will have a lien on the corpus for calls in respect of new shares paid for out of income: (*Ibid.*)

Lien of tenant for life on corpus for calls on new shares.

LVIII. If at the time of any such augmentation of capital taking place by the creation of new shares the then existing shares be at a premium, or of greater actual value than the nominal value thereof, then, unless it be otherwise provided by the special act, the sum so to be raised shall be divided into shares of such amount as will conveniently allow the same to be apportioned among the then shareholders in proportion to the existing shares held by them respectively; and such new shares shall be offered to the then shareholders in the proportion aforesaid; and such offer shall be made by letter under the hand of the secretary given to or sent by post, addressed to each shareholder, according to his address in the shareholders' address book, or left at his usual or last place of abode.

If old shares at premium, new shares to be offered to the shareholders (a).

(a) It is at least doubtful whether, if a railway company are authorised to hold shares in another company, they would be allowed to acquire new shares in the other company under the provisions of this section: *Great Western Railway Co. v. Metropolitan Railway Co.*, 32 L. J. (Ch.) 382, in which the Vice-Chancellor held on demurrer that they would not be entitled to the new shares; but the Lords Justices thought the case too doubtful to be decided on demurrer, which they simply overruled, reserving to the defendants the benefit of it at the hearing, (*Ibid.*)

Railway company holding shares in another company. Whether entitled to take new shares allotted to them.

LIX. The said new shares shall vest in and belong to the shareholders who shall accept the same, and pay the value thereof to the company at the time (a) and by the instalments which shall be fixed by the company; and if any shareholder fail for one month after such offer of new shares to accept the same, and pay the instalments called for in respect thereof, it shall be lawful for the company* (b) to dispose of such shares in such manner as they shall deem most for the advantage of the company.

Shares to vest in the parties accepting; otherwise to be disposed of by the directors, (sic.)

(a) Where new shares are issued, and an option is given to existing shareholders to take a proportion of them, time seems to be of the essence of the contract; and if a shareholder allow the day on

Time is of the essence of the contract as to option.

8 & 9 VICT. c. 16, which he is to exercise his option to pass by, he will lose his right to his proportion of the new shares: (*Pearson v. London and Croydon Railway Co.*, 14 Sim. 541; 4 R. C. 62; *Campbell v. London and Brighton Railway Co.*, 5 Hare, 519; 4 R. C. 475; and see *Sparks v. Liverpool Waterworks Co.*, 13 Ves. 428; *Doloret v. Rothschild*, 1 Sim. & St. 590; and the Companies Clauses Act, 1863, 26 & 27 Vict. c. 118,

Absence from the country. ss. 18-20, *post*.) And the absence from the country of the shareholder to whom a notice was sent, was not an excuse for not exercising the option before the appointed time: (*Pearson v. London and Croydon Railway Co.*, 14 Sim. 541; 4 R. C. 62.)

Power to dispose of new shares to be exercised by directors as trustees for company. Directors not to derive personal advantage. (b) If the power to dispose of new shares not taken up by existing shareholders be given to the directors, they are bound to exercise such power as trustees for the company, and they must not derive any personal advantage from transactions with such shares. Thus, where the chairman of a railway company caused several new shares to be transferred into the names of his nominees, and by the sale of the shares at a premium realised a large profit, he was held bound to account as a trustee for the profits derived from the sale and disposal of the shares, and to repay the same to the company with interest at five per cent: (*York and North Midland Railway Co. v. Hudson*, 16 Bea. 485; 22 L. J. (Ch.) 529.)

Special services by directors no consideration. And special services rendered by a director will not be any consideration for an improper disposal of the shares for his own advantage: (*Ibid.*)

If not at a premium, to be issued as the company think fit. LX. If at the time of such augmentation of capital taking place the existing shares be not at a premium, then such new shares may be of such amount, and may be issued in such manner and on such terms, as the company shall think fit.

CONSOLIDATION OF SHARES INTO STOCK.

Consolidation of shares. — And with respect to the consolidation of the shares into stock (a), be it enacted as follows:

Power to consolidate shares into stock. LXI. It shall be lawful for the company from time to time, with the consent of three-fifths of the votes of the shareholders present in person or by proxy at any general meeting of the company, when due notice for that purpose shall have been given, to convert or consolidate all or any part of the shares then existing in the capital of the company, and in respect whereof the whole money subscribed shall have been paid up, into a general capital stock, to be divided amongst the shareholders according to their respective interests therein (b).

Preference stock. (a) As to the creation of preference stock, see the Companies Clauses Act, 1863, 26 & 27 Vict. c. 118, ss. 13-15, set out in the notes to s. 120 of the Companies Clauses Act, 1845, *post*.

(b) With regard to the words which will be considered sufficient 8 & 9 VICT. c. 16. to pass stock under a will, it has been held that a gift of Great Western Railway shares, to which the testator was entitled at the time of his decease, would pass the stock converted before the date of the will, but not that purchased since that date : (*Oakes v. Oakes*, 9 Hare, 666.)

Words in a will which pass stock.

And a bequest of "my shares in the Great Western Railway," where the testatrix had no such shares, but had stock of the Wilts and Somerset Railway, which was an undertaking vested in the Great Western Railway, and whose shares were converted into Wilts and Somerset Railway stock of the Great Western Railway Co., was held to pass all the Great Western and Wilts and Somerset stock in the possession of the testatrix at the time of her decease : (*Trinder v. Trinder*, L. R. 1 Eq. 695.)

"My shares in the Great Western Railway."

But where the testator had bequeathed his "one thousand North British Railway preference shares," having at the date of his will that amount of "guaranteed stock," but no preference shares, and he sold the guaranteed stock, it was held that the legacy was specific, that it was adeemed, and that the legatee was not entitled to be satisfied out of preference shares or guaranteed stock which had been purchased since the date of the will : (*In re Gibson, Mathews v. Poulsham*, L. R. 2 Eq. 669 ; see also *Millard v. Bailey*, L. R. 1 Eq. 378 ; *Collins v. Squire*, 3 Russ. 467.)

Specific bequest. Adeption, "one thousand N. B. Railway preference shares."

LXII. After such conversion or consolidation shall have taken place, all the provisions contained in this or the special act which require or imply that the capital of the company shall be divided into shares of any fixed amount, and distinguished by numbers, shall, as to so much of the capital as shall have been so converted or consolidated into stock, cease and be of no effect, and the several holders of such stock may thenceforth transfer their respective interests therein, or any parts of such interests, in the same manner and subject to the same regulations and provisions as or according to which any shares in the capital of the company might be transferred under the provisions of this or the special act ; and the company shall cause an entry to be made in some book, to be kept for that purpose, of every such transfer ; and for every such entry they may demand any sum not exceeding the prescribed amount, or if no amount be prescribed, a sum not exceeding two shillings and sixpence.

Proprietors of stock may transfer stock.

LXIII. The company shall from time to time cause the names of the several parties who may be interested in any such stock as aforesaid, with the amount of the interest therein possessed by them respectively, to be entered in a book to be kept for the purpose, and to be called "The

Register of stock.

— & 9 VICT. c. 16. Register of Holders of Consolidated Stock ;" and such book shall be accessible at all seasonable times to the several holders of shares or stock in the undertaking.

Proprietors of stock entitled to dividends.

LXIV. The several holders of such stock shall be entitled to participate in the dividends and profits of the company, according to the amount of their respective interests in such stock, and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages, for the purpose of voting at meetings of the company, qualification for the office of directors, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company, but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any aliquot part of such amount of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages respectively.

APPLICATION OF CAPITAL.

Application of capital.

LXV. And be it enacted, That all the money raised by the company, whether by subscriptions of the shareholders, or by loan or otherwise, shall be applied, firstly, in paying the costs and expenses incurred in obtaining the special act, and all expenses incident thereto (a), and, secondly, in carrying the purposes of the company into execution (b).

Payment to a landowner for withdrawal of opposition.

(a) A payment contracted to be made to a landowner, in consideration of the withdrawal of his opposition to a bill, cannot be sustained on the ground that it comes within the words "costs and expenses incurred in obtaining the special act, and all expenses incident thereto:" (*Earl of Shrewsbury v. North Staffordshire Railway Co.*, L. R. 1 Eq. 593.)

Costs of projecting subsequently abandoned railways.

If out of a number of projected railways some are abandoned, the costs relating to the latter will be allowed, as being costs properly incurred in obtaining the act: (*Re Tilleard*, 32 L. J. (Ch.) 765; 8 L. T. N. S. 587.)

Agreement for payment of costs out of deposits on shares.

An agreement between a solicitor and a provisional committee, that the costs of obtaining the act should be paid out of the deposits on applications for shares, is not illegal, if providing only for costs properly incurred: (*Parsons v. Spooner*, 15 L. J. (Ch.) 155; 5 Hare, 102.)

Application of assets of abortive railway companies.

The assets in the hands of a provisional committee, whose attempt to form a company has proved abortive, are applicable, in the first

place, to the discharge of the liabilities incurred by them, and the s & 9 VICT. c. 16. surplus to distribution amongst the subscribers to the projected undertaking: (*Apperley v. Page*, 1 Ph. 779; 4 R. C. 568; 16 L. J. (Ch.) 302; *Cooper v. Webb*, 15 Sim. 454; 4 R. C. 582; *Lewis v. Billing*, 4 R. C. 414; *Wilson v. Stanhope*, 2 Coll. 629.)

Cases of this nature follow the rule laid down in *Wallworth v. Holt*, (4 My. & Cr. 619,) by Lord Cottenham, that where the partners are too numerous to be made parties to the suit, and a limited account will result in justice to them all, such an account will be decreed, although the bill contains no prayer for a dissolution of the partnership. See further on this subject, the notes to s. 90, *post*.

In cases of contributions between persons liable for the debts incurred in abortive attempts to form companies, or upon the insolvency of a company, the Court of Chancery will prevent collusion between directors and creditors, in order to oblige a contributory, by an action brought against him in the name of a creditor, but at the cost of the company, to pay his quota: (*Green v. Nixon*, 23 Bea. 530; *Lewis v. Billing*, 4 R. C. 414.) If the creditor is suing *bonâ fide*, no injunction will be granted: (*Ibid.*) See note to s. 26, *ante*, p. 37.

The contributory has been allowed to have an injunction to restrain an action at law, on the terms of paying his share into court: (*Cutts v. Riddell*, 1 De G. & Sm. 226.)

And an account will be directed of the assets of the company, and applied to the liquidation of their liabilities, at the suit of an alleged contributory, upon his showing that a managing committee had taken an assignment of a debt due by the company, in order to use it as a means of extorting from the plaintiff his share of the expenses incurred: (*Fernihough v. Leader*, 4 R. C. 373; *Lewis v. Billing*, 4 R. C. 414.)

It was held, in the case of *Carden v. General Cemetery Co.*, (5 Bing. N. C. 253,) that where a company, who by their act were to apply the first moneys received in discharge of the expenses incurred in obtaining it, the plaintiff, though a member of the company, might sue them for his time, trouble, and money expended in obtaining the act; and see *Tilson v. Warwick Gas Co.*, 4 B. & C. 962.

And under this section a solicitor was held to be entitled to recover from the company the expenses of obtaining the Act in an action for debt: (*Hitchins v. Kilkenny and Great S. and W. Railway Co.*, 9 C. B. 536.)

(b) The Court of Chancery, whether at the instance of a shareholder or of the Attorney-General, (*Attorney-General v. Great Northern Railway Co.*, 1 Dr. & Sm. 154,) will not allow the expenditure of the corporate funds for purposes for which the company was not originally constituted, although there may be no express prohibition in the act against the company's engaging in such unauthorised transactions.

Upon this principle an injunction was granted to restrain a railway company from entering into an arrangement with a steam packet company, for offering shares in the latter company to the railway proprietors, with a guaranteed dividend of five per cent., to be paid by the railway company: (*Colman v. Eastern Counties Railway Co.*, 10 Bea. 1; 4 R. C. 513.)

In like manner, a railway company was, upon an information filed

Form of suit for account in such cases, *Wallworth v. Holt*.

Contribution. Collusion between directors and creditors.

Bonâ fide action by creditor.

Payment of contribution into court.

Account.

Action in respect of services in obtaining act.

Solicitor's costs.

Purposes for which funds may not be expended.

For promoting and guaranteeing a steam packet company.

For acting as coal-dealers.

8 & 9 VICT. c. 16.	by the Attorney-General, restrained from dealing in coal: (<i>Attorney-General v. Great Northern Railway Co.</i> , 1 Dr. & Sm. 154.)
Purposes authorised must be completely carried out.	And the purposes for which the company has been incorporated must be entirely carried out, the obligation to complete the work being co-extensive with the authority to make it: (<i>Agar v. Regent's Canal Co.</i> , cited in 1 Swanst. 250; (<i>Cohen v. Wilkinson</i> , 12 Bea. 125; 5 R. C. 741; 1 M'N. & G. 481; 1 H. & T. 554; <i>Hodgson v. Earl Powis</i> , 12 Bea. 392; 7 R. C. 956; 19 L. J. (Ch.) 356; <i>Logan v. Lord Courtown</i> , 13 Bea. 22.)
Form of allegation in bill that whole work not to be completed.	The bill must in such a case contain an allegation that the directors are about to apply the funds of the company in completing a portion of the line, having abandoned the rest: (<i>Hodgson v. Earl Powis</i> , 12 Bea. 392; 7 R. C. 956; 19 L. J. (Ch.) 356.)
Where funds are deficient for purposes.	Upon the suit, however, of persons whose land the company are about to take, it seems doubtful whether an injunction would be granted upon an allegation of insufficiency of funds to complete the whole line: (<i>Salmon v. Randall</i> , 3 My. & Cr. 439; and see <i>Blakemore v. Glenmorganshire Canal Co.</i> , 1 My. & K. 154.)
Where part of line is in operation.	And the Court has a discretion to refuse its interference where it appears that part of the line is in actual operation: (<i>Hodgson v. Earl Powis</i> , on appeal, 7 R. C. 967.)
Variation of scheme.	A variation of the scheme of the railway will not be allowed, and an injunction will be granted to restrain the misapplication of the funds of the company by making a line different from that for which a certain part of their capital had been raised: (<i>Bagshaw v. Eastern Union Railway Co.</i> , 7 Ha. 114; 2 M'N. & G. 389; <i>Simpson v. Denison</i> , 10 Hare, 51; 7 R. C. 403; 16 Jur. 828.)
Powers of directors.	As to suits by shareholders against directors for keeping them within the powers and purposes of the Acts, and as to the frame of such suits, see the notes to s. 90, <i>post</i> .
Right of railway company to hold shares in another railway company.	As to the right of a company to hold shares in another company, see <i>Great Western Railway Co. v. Metropolitan Railway Co.</i> , 32 L. J. (Ch.) 382; <i>Great Western Railway Co. v. Rushout</i> , 5 De G. & Sm. 290; 16 Jur. 238.
Right to file a bill in respect thereof.	Lord Cairns, L. J., lately held in the case of shares held by one limited company in another limited company, that there was nothing in the general law of joint-stock companies to prevent one company holding shares in another: (<i>In re Barned's Banking Co.</i> , 2 W. N. 180; 16 L. T. N. S. 514.)
And to take additional shares in order to assist another company.	It seems that even where such shares stand in the name of trustees for the company, the company have sufficient interest to entitle them to maintain a suit to restrain the other company from misapplying their funds: (<i>Great Western Railway Co. v. Rushout</i> , 5 De G. & Sm. 290; 16 Jur. 238.)
Payment by amalgamated company of debts of one of its constituents.	But if already holding shares in another railway company, a railway company is not entitled to apply its funds for the purpose of purchasing additional shares in order to assist the other company in carrying its works into execution: (<i>Salomons v. Laing</i> , 12 Bea. 377, 339; 6 R. C. 289; 19 L. J. (Ch.) 291, 225.)
	It is not a misapplication of the funds of an amalgamated company to pay off a debt owing by one of the component companies before the amalgamation, by means of a call on the shareholders of

the united companies: (*Cooper v. Shropshire Union Railway Co.*, 6 S & 9 VICT. C. 16. R. C. 136.)

A company has no power to apply its funds for the prosecution of a suit not instituted by itself: (*Kernaghan v. Williams*, L. R. 6 Eq. 228.)

As to the power of a company to introduce, oppose, or support a bill in Parliament, whereby they seek either to alter their own constitution, or to prevent or assist the acquirement of parliamentary powers by other bodies, see the notes to s. 90, *post*.

Application of funds for suit not by the company.

Power to introduce, oppose, or support a bill in Parliament.

GENERAL MEETINGS.

And with respect to the general meetings of the company, and the exercise of the right of voting by the shareholders, be it enacted as follows:

LXVI. The first general meeting of the shareholders of the company shall be held within the prescribed time, or, if no time be prescribed, within one month after the passing of the special act, and the future general meetings shall be held at the prescribed periods, and, if no periods be prescribed, in the months of *February* and *August* in each year, or at such other stated periods as shall be appointed for that purpose by an order of a general meeting; and the meetings so appointed to be held as aforesaid shall be called "ordinary meetings;" and all meetings, whether ordinary or extraordinary, shall be held in the prescribed place, if any, and, if no place be prescribed, then at some place to be appointed by the directors.

General Meetings.

Ordinary meetings to be held half-yearly.

LXVII. No matters, except such as are appointed by this or the special act to be done at an ordinary meeting, shall be transacted at any such meeting, unless special notice of such matters have been given in the advertisement convening such meeting.

Business at ordinary meetings.

LXVIII. Every general meeting of the shareholders, other than an ordinary meeting, shall be called an "extraordinary meeting;" and such meetings may be convened by the directors at such times as they think fit.

Extraordinary meetings.

LXIX. No extraordinary meeting shall enter upon any business not set forth in the notice upon which it shall have been convened.

Business at extraordinary meetings.

8 & 9 VICT. c. 16.

Extraordinary
meetings may be
required by
shareholders.

LXX. It shall be lawful (a) for the prescribed number of shareholders, holding in the aggregate shares to the prescribed amount, or, where the number of shareholders or amount of shares shall not be prescribed, it shall be lawful for twenty or more shareholders holding in the aggregate not less than one tenth of the capital of the company, by writing under their hands, at any time to require the directors to call an extraordinary meeting of the company; and such requisition shall fully express the object of the meeting required to be called, and shall be left at the office of the company, or given to at least three directors, or left at their last or usual places of abode; and forthwith upon the receipt of such requisition the directors shall convene a meeting of the shareholders; and if for twenty-one days after such notice the directors fail to call such meeting, the prescribed number, or such other number as aforesaid of shareholders, qualified as aforesaid, may call such meeting, by giving fourteen days public notice thereof.

Power of
majority.

(a) In consequence of the power given to shareholders to call general meetings, the courts of equity have generally, in the absence of fraud, refused to interfere in matters relating to the internal management of companies until the opinions of the members of the company have been ascertained: (*Foss v. Harbottle*, 2 Ha. 461; *Mosley v. Alston*, 1 Ph. 790; 4 R. C. 636; 16 L. J. (Ch.) 217; and other cases, which will be found in the notes to s. 90, *post*.)

Court will direct
meeting to be
held before
making a decree.

Where a minority of the directors of a railway company filed a bill on behalf of the company against seven other directors, to restrain them from entering into a certain agreement, and from doing certain other acts complained of, the court ordered a motion to take the bill off the file, to stand over until a general meeting had been called, to give an opportunity to the shareholders to express their opinion as to the objects of the bill: (*Exeter & Crediton Railway Co. v. Buller*, 5 R. C. 211; 16 L. J. (Ch.) 449. See also *East Du Pant Lead Mining Co. v. Merryweather*, 2 H. & M. 254; 10 Jur. N. S. 1231; 13 W. R. 216; and *Re Suburban Hotel Co.*, L. R. 2 Ch. 737, 738; 17 L. T. N. S. 22, in which case a winding-up petition was presented, and Sir R. Malins, V.C., directed a general meeting to be held, when it appeared that a majority of the shareholders wished to go on with the concern; the Vice-Chancellor granted the petition upon other grounds, but his decision was reversed by the Lords Justices, who took the matter of the dissent of the majority to the petition into consideration.)

Notice of
meetings.

LXXI. Fourteen days' public notice at the least of all meetings, whether ordinary or extraordinary, shall be given

by advertisement (a), which shall specify the place, the day, and the hour of meeting; and every notice of an extraordinary meeting, or of an ordinary meeting, if any other business than the business hereby or by the special act appointed for ordinary meetings, is to be done thereat, shall specify the purpose (b) for which the meeting is called.

(a) When under this section a notice of an extraordinary meeting of a company, having its principal place of business at Swansea, was inserted in a London paper, and there was no proof of the particular paper having reached Swansea, and it appeared that it was merely circulated in London, the notice was held to be invalid: (*Swansea Dock Co. v. Leven*, 20 L. J. (Ex.) 447; 17 L. T. 256; and *see Reg. v. Aberdare Canal Co.*, 14 Q. B. 854.)

(b) As to the effect of a notice which does not specify the purpose for which the meeting is called, precisely and fully, see *In re Vale of North Railway Co.*, *Ex parte Laves*, 1 De G. M. & G. 241; 21 L. J. (Ch.) 688; 16 Jur. 343.

LXXII. In order to constitute a meeting (whether ordinary or extraordinary) there shall be present, either personally or by proxy, the prescribed quorum, and if no quorum be prescribed then shareholders holding in the aggregate not less than one twentieth of the capital of the company, and being in number not less than one for every five hundred pounds of such required proportion of capital, unless such number would be more than twenty, in which case twenty shareholders holding not less than one twentieth of the capital of the company shall be the quorum; and if within one hour from the time appointed for such meeting the said quorum be not present, no business shall be transacted at the meeting, other than the declaring of a dividend, in case that shall be one of the objects of the meeting, but such meeting shall, except in the case of a meeting for the election of directors, hereinafter mentioned, be held to be adjourned *sine die*.

LXXIII. At every meeting of the company one or other of the following persons shall preside as chairman; that is to say, the chairman of the directors, or in his absence the deputy chairman (if any), or in the absence of the chairman and deputy chairman some one of the directors of the company to be chosen for that purpose by the meeting, or in the absence of the chairman and deputy chairman and of all the directors, any shareholder to be chosen for that

s. 40 Vict. c. 16. purpose by a majority of the shareholders present at such meeting.

Business at meetings and adjournments.

LXXIV. The shareholders present at any such meeting shall proceed in the execution of the powers of the company with respect to the matters for which such meeting shall have been convened, and those only; and every such meeting may be adjourned from time to time and from place to place; and no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which such adjournment took place.

Votes of shareholders.

LXXV. At all general meetings of the company every shareholder shall be entitled to vote according to the prescribed scale (a) of voting, and where no scale shall be prescribed every shareholder shall have one vote for every share up to ten, and he shall have an additional vote for every five shares beyond the first ten shares held by him up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares; provided always, that no shareholder shall be entitled to vote at any meeting unless he shall have paid all the calls then due upon the shares held by him.

Prescribed scale. (a) When a railway act provided that for the purposes of voting £25 of capital should represent a share, and that no one should vote in respect of any less proportion, and after the formation of the company the shares were reduced to £20 each, it was held, in an action for calls, that it was competent to them to so reduce them: (*Ambergate Railway Co. v. Mitchell*, 4 Exch. 540; 19 L. J. (Exch.) 89.)

Manner of voting.

LXXVI. The votes may be given either personally or by proxies, being shareholders, authorised by writing according to the form in the schedule (F.) to this act annexed, or in a form to the like effect, under the hand of the shareholder nominating such proxy, or if such shareholder be a corporation, then under their common seal; and every proposition at any such meeting shall be determined by the majority of votes of the parties present, including proxies, the chairman of the meeting being entitled to vote, not only as a principal and proxy, but to have a casting vote if there be an equality of votes.

Regulations as to proxies (a).

LXXVII. No person shall be entitled to vote as a proxy unless the instrument appointing such proxy have been

transmitted to the secretary of the company the prescribed period, or, if no period be prescribed, not less than forty-eight hours before the time appointed for holding the meeting at which such proxy is to be used. 8 & 9 Vict. c. 16.

(a) As to the stamp duty to which instruments in the nature of proxy voting-papers are liable, see 27 & 28 Vict. c. 18, s. 14; and Stamps on proxies. 7 & 8 Vict. c. 21, ss. 6, 7; and see *Reg. v. Kelk*, 12 A. & E. 559; and *Trinity House v. Beadle*, 18 L. J. (Q. B.) 78; 13 Q. B. 175.

LXXVIII. If several persons be jointly entitled to a share, the person whose name stands first in the register of shareholders as one of the holders of such share shall, for the purpose of voting at any meeting, be deemed the sole proprietor thereof; and on all occasions the vote of such first-named shareholder, either in person or by proxy, shall be allowed as the vote in respect of such share, without proof of the concurrence of the other holders thereof. a Votes of joint-shareholders.

LXXIX. If any shareholder be a lunatic or idiot, such lunatic or idiot may vote by his committee; and if any shareholder be a minor, he may vote by his guardian or any one of his guardians; and every such vote may be given either in person or by proxy. Votes of lunatics and minors, &c.

LXXX. Whenever in this or the special act the consent of any particular majority of votes at any meeting of the company is required in order to authorise any proceeding of the company, such particular majority shall only be required to be proved in the event of a poll being demanded at such meeting; and if such poll be not demanded, then a declaration by the chairman that the resolution authorising such proceeding has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient authority for such proceeding, without proof of the number or proportion of votes recorded in favour of or against the same. Proof of a particular majority of votes only required in the event of a poll being demanded.

APPOINTMENT AND ROTATION OF DIRECTORS.

And with respect to the appointment and rotation of directors, be it enacted as follows: Appointment and rotation of directors.

LXXXI. The number of directors shall be the prescribed number (a). Number of directors.

68 *Companies Clauses Consolidation Act, 1845, ss. 81-83.*

8 & 9 VICT. c. 16. (a) It would seem, from the case of *The Thames Haven Dock and Railway Co. v. Rose*, (4 M. & G. 552; 3 R. C. 177,) that the provision as to the number of the directors is directory only; and that whether this be so or no with regard to the internal management of the affairs of the company, it certainly is so with regard to its external affairs, and has nothing to do with the power of the directors to enforce calls duly made.

Power to vary the number of directors.

LXXXII. Where the company shall be authorised by the special act to increase or to reduce the number of the directors it shall be lawful for the company, from time to time, in general meeting, after due notice for that purpose, to increase or reduce the number of the directors within the prescribed limits, if any, and to determine the order of rotation in which such reduced or increased number shall go out of office, and what number shall be a quorum at their meetings.

Election of directors (a).

LXXXIII. The directors appointed by the special act shall, unless thereby otherwise provided, continue in office until the first ordinary meeting to be held in the year next after that in which the special act shall have passed; and at such meeting the shareholders present, personally or by proxy, may either continue in office the directors appointed by the special act, or any number of them, or may elect a new body of directors, or directors to supply the places of those not continued in office, the directors appointed by the special act being eligible as members of such new body; and at the first ordinary meeting to be held every year thereafter the shareholders present, personally or by proxy, shall elect persons to supply the places of the directors then retiring from office, agreeably to the provisions hereinafter contained; and the several persons elected at any such meeting, being neither removed nor disqualified, nor having resigned, shall continue to be directors until others are elected in their stead, as hereinafter mentioned.

Board of directors *de facto*.

(a) Where there is a board of directors *de facto*, though they may not be qualified to act, or they become disqualified by bankruptcy or some other cause, still their acts, such as the signing of conveyances, may be valid, until their qualification to act as directors has been brought before a meeting of proprietors, to the calling of which there is no obstacle. *Foss v. Harbottle*, 2 Hare, 461; *Mozley v. Alston*, 1 Ph. 790; 4 R. C. 636; 16 L. J. (Ch.) 217, in which it was observed that there is no case in which, upon a bill filed by a shareholder against the directors and the company in its corporate name, relief had been granted on the ground of the invalidity of the

title of persons claiming to be the corporate officers. And see s 8 & 9 VICT. c. 16. s. 9, post.

Thus, in *Mosley v. Alston*, the Court refused, upon a bill filed by two shareholders against the directors and the company in their corporate name, to grant an injunction on the ground that the board of directors ought to have balloted out four of their number, and that four others ought to have been elected; and a demurrer to the bill was, therefore, allowed.

And upon a similar principle an injunction was refused to restrain the continuance in office of certain directors appointed in the place of others who had been removed, as was alleged, wrongfully: (*Inderwick v. Snell*, 2 M.N. & G. 216; 2 H. & T. 412; 19 L. J. (Ch.) 542.)

So also an injunction was refused to prevent directors who had been improperly appointed from acting in the affairs of the company: (*Hatherley v. Lord Shelburne*, 31 L. J. (Ch.) 873; 10 W. R. 881.)

See further as to powers of directors, &c., the notes to ss. 90 and 92, post.

LXXXIV. If at any meeting at which an election of directors ought to take place the prescribed quorum shall not be present within one hour from the time appointed for the meeting no election of directors shall be made, but such meeting shall stand adjourned to the following day at the same time and place; and if at the meeting so adjourned the prescribed quorum be not present within one hour from the time appointed for the meeting the existing directors shall continue to act and retain their powers until new directors be appointed at the first ordinary meeting of the following year.

LXXXV. No person shall be capable of being a director unless he be a shareholder, nor unless he be possessed of the prescribed number, if any, of shares; and no person holding an office or place of trust or profit under the company, or interested in any contract with the company (a), shall be capable of being a director; and no director shall be capable of accepting any other office or place of trust or profit under the company, or of being interested in any contract with the company, during the time he shall be a director.

(a) It has been decided that the effect of this and the following section is to incapacitate any one contracting with the company from becoming or continuing a director, but not to avoid the contract: (*Foster v. Oxford, &c., Railway Co.*, 13 C. B. 200; 22 L. J. (C. P.) 49; 17 Jur. 167.)

LXXXVI. If any of the directors at any time subsequently to his election accept or continue to hold any

Non-compliance with provision as to balloting out a certain number of directors.

Wrongful removal of directors.

Improper appointment.

Existing directors continued on failure of meeting for election of directors.

Qualification of directors.

Contract by director with company not avoided *ipso facto*.

Cases in which office of director shall become vacant.

8 & 9 VICT. c. 16. other office or place of trust or profit under the company (a), or be either directly or indirectly concerned in any contract with the company, or participate in any manner in the profits of any work to be done for the company, or if such director at any time cease to be a holder of the prescribed number of shares in the company, then in any of the cases aforesaid the office of such director shall become vacant, and thenceforth he shall cease from voting or acting as a director.

Directors may be bankers and treasurers of the company. (a) The disqualification of this clause is only that arising from being concerned in contracts with the company in the execution of its enterprise, and some of the directors of a railway, who were also the bankers and treasurers of the railway, were held not to be discharged thereby from the direction: (*Sheffield and Manchester Railway Co. v. Woodcock*, 7 M. & W. 574; 2 R. C. 522.) See note to preceding section.

Shareholder of an incorporated joint-stock company not disqualified by reason of contracts. LXXXVII. Provided always, That no person, being a shareholder or member of any incorporated joint-stock company, shall be disqualified or prevented from acting as a director by reason of any contract entered into between such joint-stock company and the company incorporated by the special act; but no such director, being a shareholder or member of such joint-stock company, shall vote on any question as to any contract with such joint-stock company.

Rotation of directors. LXXXVIII. The directors appointed by the special act, and continued in office as aforesaid, or the directors elected to supply the places of those retiring as aforesaid, shall, subject to the provision hereinbefore contained for increasing or reducing the number of directors, retire from office at the times and in the proportions following, the individuals to retire being in each instance determined by ballot among the directors, unless they shall otherwise agree; (that is to say,)

At the end of the first year after the first election of directors the prescribed number, and if no number be prescribed one-third of such directors, to be determined by ballot among themselves, unless they shall otherwise agree, shall go out of office:

At the end of the second year the prescribed number, and if no number be prescribed one-half of the remaining number of such directors, to be determined in like manner, shall go out of office:

At the end of the third year the prescribed number, and 8 & 9 Vict. c. 16.
if no number be prescribed the remainder of such
directors, shall go out of office:

And in each instance the places of the retiring directors shall be supplied by an equal number of qualified shareholders; and at the first ordinary meeting in every subsequent year the prescribed number, and if no number be prescribed one-third of the directors, being those who have been longest in office, shall go out of office, and their places shall be supplied in like manner; nevertheless every director so retiring from office may be re-elected immediately or at any future time, and after such re-election shall, with reference to the going out by rotation, be considered as a new director: Provided always, that if the prescribed number of directors be some number not divisible by three, and the number of directors to retire be not prescribed, the directors shall in each case determine what number of directors, as nearly one-third as may be, shall go out of office, so that the whole number shall go out of office in three years.

LXXXIX. If any director die, or resign, or become disqualified or incompetent to act as a director, or cease to be a director by any other cause than that of going out of office by rotation, as aforesaid, the remaining directors, if they think proper so to do, may elect in his place some other shareholder, duly qualified to be a director; and the shareholder so elected to fill up any such vacancy shall continue in office as a director so long only as the person in whose place he shall have been elected would have been entitled to continue if he had remained in office.

Supply of occasional vacancies in office of directors.

POWERS OF DIRECTORS (a).

And with respect to the powers of the directors, and the powers of the company to be exercised only in general meeting, be it enacted as follows:

Powers of directors.

XC. The directors shall have the management and superintendence of the affairs of the company, and they may lawfully exercise all the powers of the company, except as to such matters as are directed by this or the special act to be transacted by a general meeting of the company, but all the powers so to be exercised shall be exercised in accord-

Powers of the company to be exercised by the directors.

8 & 9 VICT. c. 16.

ance with and subject to the provisions of this and the special act; and the exercise of all such powers shall be subject also to the control and regulation of any general meeting specially convened for the purpose, but not so as to render invalid any act done by the directors prior to any resolution passed by such general meeting.

The Court will not interfere in matters of internal arrangement.

(a) It may be regarded as a well-settled principle of courts of equity, that they will refuse to interfere in matters appertaining strictly to the internal management and administration of a company, which are properly regulated by a general meeting, unless the acts proposed to be done by the directors, with or without the support of the majority, are *ultra vires* of the company, or fraudulent; nor at the instance of the majority, except where the minority offer a factious opposition to the lawful proceedings of the majority.

Foss v. Harbottle.
Fraud and misappropriation alleged against directors.

Bankruptcy of directors.

Usurpation of office may be remedied by bill in name of corporation.

Mosley v. Alston.
Usurpation of office.

Removal of directors.

Improper appointment of directors.

Minority to have opportunity of being heard.

Court directs general meeting to be held.

This was the rule laid down by Sir J. Wigram, V.-C., in *Foss v. Harbottle*, (2 Hare, 461,) in which a shareholder filed a bill, on behalf of himself and all the other shareholders in a building company, alleging fraud and misapplication of funds by the directors, that some of the directors were bankrupt, and were therefore disqualified from acting as officers of the company; the Vice-Chancellor holding, that since no steps had been taken to call a general meeting of the company, and that, in a suit so framed, usurpation of office by disqualified directors could not be rectified, the demurrer of the directors should be allowed. His Honour observed that such usurpation could be effectually remedied on a bill in the name of the corporation.

In another case, where it appeared that the directors of a railway company had not, in accordance with their act of Parliament, balloted out some of their number, and elected others in their stead, a demurrer by the directors to a bill filed by two shareholders on behalf of themselves and all other the shareholders, alleging that there was no properly constituted board of directors, and that the present directors were usurping their office, was, for the same reasons as those urged in *Foss v. Harbottle*, allowed: (*Mosley v. Alston*, 1 Ph. 790; 16 L. J. (Ch.) 217; 4 R. C. 636.)

Upon similar principles, the removal of certain directors by resolution of a general meeting, which was held to be the best judge of the grounds for such removal, was not interfered with by the Court: (*Inderwick v. Snell*, 2 H. & T. 412; 2 M. & G. 216; 19 L. J. (Ch.) 542.)

And an improper appointment of directors will not justify a motion for an injunction to restrain them from acting in that capacity: (*Hattersley v. Lord Shelburne*, 31 L. J. (Ch.) 873; 10 W. R. 881.)

See s. 83, *ante*, p. 68.

That the Court will give the minority an opportunity to be heard concerning the matters complained of, is shown by a case in which a bill was filed by a minority on behalf of the company, and the Court directed a general meeting to be held before it would make a decree upon a motion to take the bill off the file: (*Exeter and Crediton Railway Co. v. Buller*, 5 R. C. 211; 16 L. J. (Ch.) 449; see also *East Du Pant Lead Mining Co. v. Merryweather*, 2 H. & M. 254; 10 Jur. N. S. 1231; 13 W. R. 216; and *Re Suburban Hotel Co.*, L. R. 2 Ch. 737, 738.)

Upon the principle of the decision in *Foss v. Harbottle*, the Court 8 & 9 Vict. c. 16. refused to interfere at the suit of a holder of new shares on behalf of himself and all other such holders, upon an allegation that the shares had been raised to pay off certain mortgages, but that a call had been made, the money arising from which it was intended to devote to other purposes: (*Yettis v. Norfolk Railway Co.*, 3 De G. & Sm. 293; 5 R. C. 487.)

So also, where there were several classes of shareholders in a company, a bill by a member of one class on behalf of himself and all other the members of that class, complaining of a call stated to have been corruptly made by the directors upon that class alone, was not entertained: (*Bailey v. Birkenhead, Lancashire, and Cheshire Junction Railway Co.*, 12 Bea. 433; 6 R. C. 256.)

And the House of Lords dismissed an appeal from Scotland from an interlocutor refusing relief upon an application for the reduction of a call, on the ground of misapplication of the funds of the company by the directors: (*Orr v. Glasgow, Airdrie, and Monklands Junction Railway Co.*, 3 McQueen, 799.)

So, power being given for the creation of new shares, with a preferential dividend, the Court will not interfere on a bill charging that a resolution authorising the issue of such shares was irregularly passed, and that none of the works of certain branch railways, the expense of which was to be defrayed out of such issue, have been executed: (*Edwards v. Shrewsbury and Birmingham Railway Co.*, 2 De G. & Sm. 537.)

The conversion of preference shares into debentures, in pursuance of resolutions passed by majorities at general meetings of a company, will not be disturbed by the Court at the suit of the minority, if the proceedings were fairly conducted: (*Lord v. Governor and Company of Copper Miners*, 2 Ph. 740.)

With respect to the legality of Lloyd's bonds, see *ante*, p. 39. Vice-Chancellor Wood, in dealing with the question, observed, that he was not prepared to say that the company exceeded their powers by the issue of such bonds, and therefore the interference of the Court would not be justified. It might be a bad way of raising money, but according to the rule in *Foss v. Harbottle*, this was not a ground for interference: (*White v. Carmarthen and Cardigan Railway Co.*, 1 H. & M. 786; 33 L. J. (Ch.) 93; 12 W. R. 68; 9 L. T. N. S. 439.)

In like manner the Court has no jurisdiction to restrain the declaration of a dividend before the completion of the line: (*Browne v. Monmouthshire Railway and Canal Co.*, 13 Bea. 32; 7 R. C. 682; 20 L. J. (Ch.) 497; and see, as to the dividends, *Henry v. Great Northern Railway Co.*, 4 K. & J. 1; 1 De G. & J. 606; 27 L. J. (Ch.) 1; and the notes to s. 120, *post*.)

Acts done by directors, who have since retired, cannot be disputed, if they have been sanctioned by a general meeting of the company; *e.g.*, a settlement of accounts passed by a general meeting, in respect of which money has been paid or received by the retired directors: (*Kent v. Jackson*, 14 Bea. 367; 2 De G. M. & G. 49.)

The rule under consideration has been accurately stated by Lord Romilly, M.R., in the following words:—"In matters relating strictly to the internal management of a company, even although the Court

Misapplication of funds raised for specific purpose.

Calls corruptly made.

Redirection of call on ground of misapplication not decreed.

Resolutions irregularly passed.

Conversion of shares into stock not disturbed at instance of minority.

Issue of Lloyd's bonds if *boni fide*, not *ultra vires*.

Declaration of dividend before line completed not restrained.

Act of directors who have retired.

Rule in these cases stated by M. R.

74 *Companies Clauses Consolidation Act, 1845, s. 90.*

- 8 & 9 Vict. c. 16. should come to the conclusion that the course adopted is not warranted by the terms of the instrument [or Act of Parliament], the Court will not interfere, even though the minority should have summoned a meeting of all the shareholders, and the majority should have persisted in the course complained of." "But," his Lordship continues, "if the measures adopted are plainly beyond the powers of the company, and are inconsistent with the object for which the company was constituted, then the Court will, at the instance of the minority, interpose to prevent the performance of the act complained of; and it will do so whether an appeal has or has not been made by the minority to the shareholders generally:" (*Gregory v. Patchett*, 33 Bea. 595; *Charlton v. Newcastle and Carlisle Railway Co.*, 5 Jur. N. S. 1096.)
- Ultrâ vires.* The Court has, according to this principle, jurisdiction at the suit of one of several members of a private partnership to compel the rest to act according to the provisions of the partnership, and will interfere for that purpose: (*Const v. Harris*, T. & R. 518; *Adley v. Whitstable Co.*, 17 Ves. 315; 19 Ves. 304; 1 Mer. 107.)
- Court interferes to compel company to act according to its statutes. But where, in a company, the minority offer a factious opposition to the lawful proceedings of the majority, the Court will use its discretion, and, at the suit of the majority, oblige the minority to conform to their requirements.
- Factional opposition by minority. Allegations of undue influence employed to obtain such majority will thus not lead the Court, in the absence of actual fraud, to interfere, and to upset the resolutions passed under such circumstances; in other words, the Court cannot help the fact of a particular person or corporation having, by large purchases of shares, acquired a preponderating influence over the affairs of the company: (*Exeter and Crediton Railway Co. v. Buller*, 5 R. C. 211; 16 L. J. (Ch.) 449; *Fraser v. Whalley*, 2 H. & M. 10.)
- Undue influence obtained by large purchases of shares. But where no appeal has been made to the general body of shareholders, the Court may perhaps be willing, before refusing entirely the relief asked, to direct a general meeting to be held in order to obtain the opinion of the members of the company who are in the minority: (*Exeter and Crediton Railway Co. v. Buller*, 5 R. C. 211; 16 L. J. (Ch.) 449; *East Du Pant Lead Mining Co. v. Merryweather*, 2 H. & M. 254; 10 Jur. N. S. 1231; 13 W. R. 216; *Re Suburban Hotel Co.*, L. R. 2 Ch. 737, 738.)
- Court will in a proper case direct meeting to be held. It seems, however, that where an act complained of is such that the results feared are likely to happen before a general meeting can be called, (as, where preference shares would be issued before that could be done,) the Court would not refuse relief: (*Edwards v. Shrewsbury and Birmingham Railway Co.*, 2 De G. & Sm. 537.)
- Court interferes if evil happens before general meeting can be called. And where it appeared that a railway company, in which the plaintiffs, another railway company, held shares, having elected a General Purposes Committee, including some of the directors of the plaintiff company, but these had been excluded from their meetings, the obvious difficulties in the way of calling a general meeting at which a satisfactory result could be arrived at, were held to justify the Court in interfering in matters purely appertaining to the internal management of the company: (*Great Western Railway Co. v. Rushout*, 5 De G. & Sm. 290; 16 Jur. 238.)
- Illegal exclusion of members of a committee from its sittings. And it is clear that where a company acts in fraud of the Com
- Acts in fraud of Consolidation Acts.

panies Clauses Act, for instance, by the declaration of a dividend out of capital, in contravention of s. 121, the Court is not prevented from interfering: (*Bloxam v. Metropolitan Railway Co.*, L. R. 3 Ch. App. 337, 351; and see *Hoole v. Great Western Railway Co.*, L. R. 3 Ch. 262.)

Before stating the cases in which relief has been granted against the illegal acts of directors and committees of management appointed for the administration of the affairs of railway companies, it will be convenient to notice the frame of the suits in which such relief has been granted, and to give the principles upon which the Court will interfere upon the application of a few persons on behalf of themselves and all other persons in the same interest with them.

Frame of suits against directors;

by a few persons on behalf of themselves and others in same interest. Partnership suits.

"It has been held in many cases, that to a bill praying for a dissolution of a partnership, all the partners, however numerous, are necessary parties; and that, consequently, a bill filed by some on behalf of themselves and others, and praying for a dissolution, is bad on demurrer."—See Lindley on Partnership, 2d edit. p. 917.

But where the number of partners is too large, as in the case of incorporated companies, to admit of being made parties to the suit, all those who are in the same interest may be represented by one or more suing on behalf of himself or themselves, and all others in that interest, in a bill not praying for a dissolution: (See *per* Lord Cottenham, in *Wallworth v. Holt*, 4 My. & Cr. 619, 635; and see *Taylor v. Salmon*, 4 My. & Cr. 134.)

Number of partners too large for all to be parties.

In order to be entitled to sue on behalf of himself and others in the same interest, a plaintiff must show that he has the interest in respect of which he sues.

Plaintiff suing on behalf, &c., must show his title to do so.

Such a plaintiff must therefore allege on the face of his bill that he is a shareholder or partner, and a mere allegation that he is a director and a trustee is not sufficient: (*Banks v. Parker*, 16 Sim. 176.)

That he is a shareholder or partner.

A director is not a proper person to sue on behalf of shareholders, since he cannot be taken to be ignorant of the matters of which he complains: (*Burt v. British Nation Life Assurance Association*, 4 De G. & J. 158; 5 Jur. N. S. 355.)

He should not be a director.

But a mere statement that the plaintiff holds his shares by purchase, without showing how his title to them is derived, does not satisfy the Court, which will require to know whether he had signed articles, or the subscription contract, or done any of the things necessary to be done to make him a member: (*Walburn v. Ingilby*, 1 My. & K. 61, 77; see *King of Spain v. Machado*, 4 Russ. 225.)

Statement that plaintiff holds his shares by purchase.

And a plea that a plaintiff, who sued in the representative character, had sold his shares, and thus parted with his interest in the suit, was allowed, the bill not being sustainable upon the mere ground that the plaintiff, as vendor, might still be liable to third persons in respect of the shares sold, nor because the vendee was one of the "other persons" in whose behalf the suit was instituted: (*Doyle v. Muntz*, 5 Hare, 509.)

Cannot so sue if he has sold his shares.

It is not proper to make a vendor of scrip a party to the suit: (*Bagshaw v. Eastern Union Railway Co.*, 7 Hare, 114; 2 M. & N. 389; and see *Burt v. British Nation Life Assurance Association*, 4 De G. & J. 174; *per* Sir J. L. K. Bruce, L. J.)

Vendor of scrip not a proper party.

But provided the suit be *bonâ fide* for the benefit of the general body of the shareholders, there seems to be no objection to a purchase of shares in order to sue in this

Purchase of shares in order to sue in this

8 & 9 Vict. c. 16.

form: good if
bonâ fide for
benefit of all.

But not, if plain-
tiff is nominee
of a rival com-
pany.

Purchase of
shares in order
to be present at
a meeting not
objectionable.

Plaintiff must
have beneficial
interest in his
shares.

Must show that
there are share-
holders on behalf
of whom you can
sue.

Suit must be for
benefit of class
represented.

Relief merely in-
dividual to the
plaintiff will not
be granted on
such a bill.

Must sue on
behalf, &c.

Bill by two share-
holders against
directors and
company
demurrable.

chase by a plaintiff for the purpose of filing a bill in the representative form: (*Hare v. London and North-Western Railway Co.*, 30 L. J. (Ch.) 820; and see per Lord Westbury, C., in *Forrest v. Manchester, Leeds, and Lincolnshire Railway Co.*, 7 Jur. N. S. 887.)

If, however, the plaintiff so suing is a mere nominee of a rival company, suing at their instigation and indemnified by them against the costs, it seems a purchase of shares in order to give him an interest for the purpose of filing a bill would be fatal to his claim for relief: *Forrest v. Manchester, Leeds, and Lincolnshire Railway Co.*, 7 Jur. N. S. 887; and see *Rogers v. Oxford, Worcester, and Wolverhampton Railway Co.*, 2 De G. & J. 662, where, however, the bill was dismissed upon another ground. But see *Colman v. Eastern Counties Railway Co.*, 10 Bea. 1; 4 R. C. 513, where Lord Langdale, M. R., thought that the fact that the plaintiff was a wharfinger, and was stated by the secretary of the railway company to be suing at the instigation of a rival steam-packet company, whose agent he was, was not a sufficient objection to induce the Court to withhold its interference. So also where the plaintiff, suing on behalf of himself and all other shareholders, purchased £500 stock in order to impeach the conduct of directors, who were alleged to have declared a dividend payable out of capital, he was held to have sufficient interest: (*Blaxam v. Metropolitan Railway Co.*, 3 W. N. 37, 53; L. R. 3 Ch. App. 337.)

There does not appear to be any valid objection on the ground that the plaintiff has purchased shares in order to be present at a meeting at which the acts of directors are to be called into question: (*Exeter and Crediton Railway Co. v. Buller*, 16 L. J. (Ch.) 449; 5 R. C. 211; *Seaton v. Grant*, L. R. 2 Ch. App. 459.)

It would seem that the person who sues on behalf of his co-shareholders must have a beneficial, and not a bare legal, interest in his shares: (*Doyle v. Muntz*, 5 Hare, 509.)

A bill filed on behalf of other persons must show that there are, in fact, such other persons on whose behalf the suit can be sustained—e.g., that there are shareholders of the company: (*Clay v. Rufford*, 8 Hare, 281.)

It must be evident also that the suit is *bonâ fide* for the benefit of the class in whose behalf the plaintiff sues, that the bill is filed: (*Forrest v. Manchester, Sheffield, and Lincolnshire Railway Co.*, 7 Jur. N. S. 887, per Lord Westbury, C.)

And thus an individual who refuses to pay his contribution to expenses incurred by a provisional committee will not be allowed to sue on behalf of himself and all other members of the provisional committee, to obtain relief against alleged misapplication of funds by an audit committee appointed by them: (*Sharp v. Day*, 1 Ph. 771; 16 L. J. (Ch.) 1.)

But where the common interest of the class may be served by a suit in the representative form, it is not competent for one shareholder individually to file a bill for the relief applicable to all, without stating that he sues on behalf of all the other members of the class.

Thus a suit by two shareholders against the directors and the company in their corporate name was held to be demurrable: (*Ma v. Alston*, 1 Ph. 790; 16 L. J. (Ch.) 217; *Baldwin v. Lawrence*, 1 & S. 18; *Cooper v. Earl Powis*, 3 De G. & Sm. 688.)

If, however, it appears to the Court that the interests of absent shareholders may be prejudicially affected, or that full justice cannot be done to the defendants, without having all the plaintiffs individually before the Court, a representative suit will not be allowed to go on. *Williams v. Salmond*, 2 K. & J. 463, where an account was asked to be re-opened, and it appeared to be possible that some sums might have been overpaid to some of the absent plaintiffs, in which case there would be a right in the defendants to proceed individually against them: (see also *Cramer v. Bird*, L. R. 6 Eq. 143.)

The 42d section of the Improvement of Jurisdiction of Equity Act, (15 and 16 Vict. c. 86,) which provides for some cases in which the defendant is precluded from taking objection for want of parties, has been held not to enable a single shareholder to sue directors as trustees: (*White v. Carmarthen and Cardigan Railway Co.*, 1 H. & M. 786; 33 L. J. (Ch.) 93; 12 W. R. 68; 9 L. T. N. S. 439.)

Nor does s. 49 of the same act apply to a misjoinder in cases of this nature, so that absent plaintiffs may be treated as defendants: (*Clements v. Bowes*, 1 Drew. 684.)

And this obligation to sue on behalf of persons in the same interest is not a matter in the discretion of the Court, but is an undoubted principle upon which the Court acts, whether the other members of the class affected have concurred in the objects of the suit or not: (*Williams v. Salmond*, 2 K. & J. 463; *Salomons v. Laing*, 12 Bea. 377; 6 R. C. 289; 19 L. J. (Ch.) 295; and see *per Sir J. L. Knight Bruce*, L. J., in *Burt v. British Nation Life Assurance Association*, 4 De G. & J. 158, 174.)

The appointment of a public officer to bring suits and actions in the name of the company, does not prevent the filing of a bill by one shareholder, on behalf of himself and all others, against the directors for a dissolution: (*Van Sandau v. Moore*, 1 Russ. 441,) or to charge the directors with moneys misappropriated to their own use: (*Hichens v. Congreve*, 4 Russ. 562.)

And an action brought by one shareholder against the directors will not deprive another shareholder of the right to sue on behalf of himself and all the other shareholders: (*Sibson v. Edgworth*, 2 De G. & S. 73.)

Great care should be taken that the interest of all the persons in whose behalf the plaintiff sues is really identical; and if they do not join in the suit in their own character, the plaintiff, if he knows who they are, should make them defendants: (*Apperley v. Page*, 1 Ph. 779; 4 R. C. 568; 16 L. J. (Ch.) 302.)

That there is no difficulty in having the interests of each particular class represented by individuals suing on behalf of themselves and the class to whom they belong, is admitted, and is shown by the cases of *Lloyd v. Loaring*, 6 Ves. 773; *Chancey v. May*, Prec. in Ch. 592; *Good v. Blewitt*, 13 Ves. 397; *Cockburn v. Thompson*, 16 Ves. 321; *Pearce v. Piper*, 17 Ves. 1; *Blair v. Agar*, 1 Sim. 43; *Lund v. Blanshard*, 4 Hare, 9.

And thus, where the validity of a call is in question, and it has been paid by some shareholders, a bill by one shareholder on behalf of himself and all others is not sufficient, and those who have paid the call should, at least, be made defendants: (*Bailey v. Birkenhead, Lancashire, and Cheshire Junction Railway Co.*, 12 Bea. 433; 6 R. C.

s & 9 Vict. c. 16.

If necessary, all parties to be individually plaintiffs.

15 & 16 Vict. c. 42, s. 86, not applicable where one shareholder sues directors.

S. 49 does not in such suits enable absent plaintiffs to be treated as defendants.

Concurrence of persons represented unnecessary.

Appointment of public officer to sue does not interfere with right to sue on behalf, &c.

Pending suit by one shareholder does not prevent another suing on behalf, &c.

Interests of plaintiff and persons represented must be identical.

Each separate class may be separately represented.

Example: call made and paid by some but not by others.

78 *Companies Clauses Consolidation Act, 1845, s. 90.*

8 & 9 VICT. c. 16. 256; *Richardson v. Larpent*, 2 Y. & C. C. C. 507; *Lund v. Blanchard*, 4 Hare, 9.)

And where balance of assets of abortive scheme has not been shared by all.

So also, upon a bill filed by one of the subscribers to whom his share in the balance of funds in the hands of the directors of an abortive railway company had been paid, on behalf of himself and all the other shareholders, against the directors, for an account, &c., it was held that those who had received no share of the balance, ought to be made defendants: (*Lovell v. Andrew*, 15 Sim. 581.)

And where only some have signed the subscription contract.

It was doubted in another case, whether the fact that only some of the shareholders had signed the subscription contract, precluded all the shareholders from suing by a single shareholder in their behalf: (*Sibson v. Edgworth*, 2 De G. & Sm. 73.)

If persons in different interests are unknown, bill should allege it.

If the plaintiff does not actually make persons in a different interest parties to the suit, he must, at least, state upon the face of his bill that there are such persons, that they are numerous, but that he does not know their names: (*Hodgkinson v. National Live Stock Insurance Co.*, 26 Bea. 473; 4 De G. & J. 422.)

Leave to amend for misjoinder or non-joinder.

The misjoinder or non-joinder of parties who ought thus to be represented, will in general be remedied by amendment by leave of the Court: (*Cooper v. Earl Powis*, 3 De G. & Sm. 688.)

Or for the reason that a bill in the representative form is not applicable.

And leave to amend, will, on the other hand, be given, if it appear that in the form of a bill filed on behalf of himself and all others having an apparently equal title to relief, the plaintiff cannot obtain the relief asked by the bill: (*Jones v. Rose*, 4 Hare, 52.)

Plaintiff on behalf of all except defendants.

Where a plaintiff sued "on behalf of himself and all other the shareholders in the Shrewsbury and Birmingham Railway Co., except such of the shareholders of the said company as are respectively represented by those shareholders hereinafter named as defendants hereto," it was doubted whether that form of expression was sufficiently clear as to the parties suing; but it was considered a case in which leave to amend would be given: (*Edwards v. Shrewsbury and Birmingham Railway Co.*, 2 De G. & Sm. 537.)

Where right is individual, suit should be brought by plaintiff in his own name.

Where the right of each plaintiff is individual, as in the case of dividends, the suit to enforce their payment, or to contest the right of the directors to declare them, should be brought by the plaintiff in his own name alone: (*Carlisle v. South-Eastern Railway Co.*, 6 R. C. 670; 2 H. & T. 366; 19 L. J. (Ch.) 477; and *Morgan v. Great Eastern Railway Co.* (2), 1 H. & M. 560.) where for this reason, and because the plaintiff could not be treated as a trustee of the funds in question, costs as between party and party only were decreed.

Costs.

Where act complained of is an act of company, they should be parties in the corporate name. Example: where different line intended to be constructed.

Where the act to be restrained is in fact the act of the company, so that the injunction is to restrain the company itself, the company should be made a party to the suit in its corporate name.

Thus a bill to restrain the construction of a different line from that authorised by the act to be made, is correctly framed, as filed by one scripsholder on behalf of himself and all other the scripsholders against the company in its corporate name: (*Bagshaw v. Eastern Union Railway Co.*, 7 Hare, 114; 18 L. J. (Ch.) 193; 2 M.N. & G. 389; 2 H. & T. 201; 19 L. J. (Ch.) 410; *Winch v. Birkenhead, Lancashire, and Cheshire Railway Co.*, 5 De G. & Sm. 562; 7 R. C. 384; *Beman v. Rufford*, 1 Sim. N. S. 550; 7 R. C. 48.)

Where directors are defendants with company.

But where the directors *quâ* directors are the persons to be re-

strained, it is correct to make them the defendants to the suit, and 8 & 9 Vict. c. 16. incidental relief, by restraining the corporate action of the company, is obtained, by adding the company in its corporate name as defendant. This will appear by a reference to the numerous cases noticed below, in which the powers of directors have been controlled and restricted.

If, however, particular directors only are the real offending parties, those only should be made defendants : (*Harrison v. Brown*, 5 De G. & Sm. 728.) Relief against particular directors.

Where the company has failed, and is virtually put an end to by liquidation or otherwise, it seems that a shareholder may still file a bill on behalf of himself and all other the shareholders against the directors, to impeach their acts during the existence of the company : (*Gregory v. Patchett*, 33 Bea. 595.) And against retired directors of dissolved company.

So where the undertaking had been sold to another company from whom a sum of stock had been received by way of consideration, more than sufficient to pay the liabilities of the company, and the functions of the company had ceased, an account was ordered against the directors with reference to the funds remaining in their hands : (*Cramer v. Bird*, L. R. 6 Eq. 143.)

To a bill seeking to restrain the construction of part of the line only, a company, to whom the part which had been completed was to be leased, were held to be necessary parties : (*Hodgson v. Earl Pouls*, 12 Bea. 392 ; 7 R. C. 956 ; 19 L. J. (Ch.) 356.) Lessees of the line to be parties.

And a railway company making an *ultra vires* agreement with another railway company, should be a party to a suit by shareholders, to set aside the agreement, since they must be taken to have known that the agreement was *ultra vires*, e.g., for unlawfully taking shares in the other company : (*Salomons v. Laing*, 12 Bea. 377 ; 19 L. J. (Ch.) 295 ; 6 R. C. 289 ; and see *Bryson v. Warwick Canal Co.*, 4 De G. M. & G. 711.) Both companies making *ultra vires* agreement to be parties.

As to the principle upon which the Court of Chancery will interfere to prevent the illegal or corrupt exercise of the powers of directors, and set aside acts which are *ultra vires* :— Acts which are *ultra vires*.

The powers given by an Act of Parliament extend no further than is expressly stated in the Act, or is necessarily or properly required for carrying into effect the undertaking and works which the Act has properly sanctioned. The Court of Chancery has, therefore, uniformly restrained by injunction any departure from the strict and exclusive exercise by directors of those powers, and the application of the funds of the company to any other purposes, to more restricted purposes, or in any way otherwise than as authorised by the Act by which the company was incorporated.

With regard to the cases in which injunctions have been granted to restrain acts deemed to be *ultra vires* of the directors of the company :—

A railway company was restrained upon a bill filed by a shareholder, on behalf of himself and all other the shareholders in the company, against the directors and the company, from entering into an arrangement, by which the directors were about to form a steam-packet company, to offer shares in it to the railway proprietors, and to guarantee a dividend of five per cent. upon such shares : (*Colman v. Eastern Counties Railway Co.*, 10 Bea. 1 ; 4 R. C. 513.) Promoting and guaranteeing a steam-packet company.

8 & 9 Vict. c. 16.
Dealing in coal.

Unauthorised
construction of a
quay and har-
bour.

Illegal acts re-
strained, even
where beneficial.

Using steam
ferry-boats for
other than autho-
rised purposes of
the ferry.

A different or
less work than
authorised may
not be con-
structed.

Example: con-
struction of part
of line only.

Or different line.

Leases, where
part of line in
lease and in
operation, but
rest not made.

So also upon an information by the Attorney-General, alleging that the Great Northern Railway Company were engaged in large dealings in coal, an injunction to restrain their continuance was granted: (*Att.-Gen. v. Great Northern Railway Co.*, 1 Dr. & Sm. 154.)

And the House of Lords set aside a contract, by which, before the passing of a railway bill, certain magistrates agreed to obtain an act for the formation of a quay and harbour, to be constructed at the expense of the railway company, who agreed on their part to advance the whole cost already incurred in the construction of the harbour: (*Caledonian and Dumbartonshire Railway Co. v. Magistrates of Helensburgh*, 2 M'Queen, 391.)

It should be observed that the rule applies in all cases, however beneficial to the company, the undertaking of works, business, or things not authorised by the act, may be: (*Munt v. Shrewsbury and Chester Railway Co.*, 13 Bea. 1; 20 L. J. (Ch.) 169; *Caledonian and Dumbartonshire Railway Co. v. Magistrates of Helensburgh*, 2 M'Queen, 391.)

It does not appear that the authority of these cases is much shaken by the decision of the Master of the Rolls, in a late case in which he dismissed a bill filed by a shareholder, on behalf of himself and all other the shareholders in a railway company, who, having power to use steamboats for the purposes of a ferry, used them when not required for the ferry for trips to sea, (*Forrest v. Manchester, Sheffield, and Lincolnshire Railway Co.*, 30 Bea. 40), since Lord Westbury, C., in affirming that decision, expressly stated that he did so, not upon the ground taken in the Court below, but because it appeared that the plaintiff was not suing *bonâ fide* for the benefit of the railway company, but by the direction, and at the expense of a rival steam-packet company, of which the plaintiff was himself also a director: (7 Jur. N. S. 887.) See *Cory v. Yarmouth and Norwich Railway Co.*, 3 Hare, 593; 3 R. C. 524, as to an interference by a railway company, with the rights of a ferry-owner; the case was sent for the opinion of a court of law.

As a corollary from the principle that directors may not overstep the boundaries of their authority, it has been ruled that they may not substitute for the work the company is empowered to construct a different or less work, and that their obligation to construct the line is co-extensive with their authority to make it.

Thus an injunction was granted at the suit of a shareholder on behalf of himself and all the other shareholders in a railway company, to restrain the application of the corporate funds to the construction of part only of the prescribed line: (*Cohen v. Wilkinson*, 12 Bea. 125; 1 M'N. & G. 481; 5 R. C. 741; 1 H. & T. 554; *Logan v. Lord Courtown*, 13 Bea. 22; and see *Graham v. Birkenhead, Lancashire, and Cheshire Junction Railway Co.*, 12 Bea. 460; 2 M'N. & G. 145; 7 R. C. 938.)

And money raised for the purpose of making a branch railway was not allowed to be applied to the construction of a different line: (*Bagshaw v. Eastern Union Railway Co.*, 7 Hare, 114; 2 M'N. & G. 389; *Simpson v. Denison*, 10 Hare, 51; 7 R. C. 403; 16 Jur. 828.)

Where, however, it appeared that part only of the line was intended to be completed, but the line was in lease to another company, who were not parties to the suit, and part of the line was in

actual operation, the Lords Justices dissolved an injunction which 8 & 9 Vict. c. 16. had been granted by the Master of the Rolls: (*Hodgson v. Earl Powis*, 12 Bea. 392; 7 R. C. 956; 19 L. J. (Ch.) 356.

The bill, in cases of this nature, must contain an allegation that the directors intend to apply the funds of the company in completing a portion of the line, having abandoned the rest: (*Hodgson v. Earl Powis*, 12 Bea. 392; 7 R. C. 956.)

With respect to the doctrine of law as to contracts *ultrâ vires* of railway companies:—

A general rule of law on the question of how a contract may be deprived of validity by being *ultrâ vires*, has thus been laid down by the late Lord Wensleydale in the case of *Scottish North-Eastern Railway Co. v. Stewart*, 3 M'Q. 382, 415:—"There can be no doubt that a corporation is fully capable of binding itself by any contract under its common seal in England, and without it in Scotland, except when the statutes by which it is created or regulated expressly, or by necessary implication, prohibit such contract between the parties. *Primâ facie* all its contracts are valid, and it lies on those who impeach any contract to make out that it is avoided. This is the doctrine of *ultrâ vires*, and is no doubt sound law, though the application of it to the points of each particular case has not always been satisfactory to my mind."

A leading case on this subject is that of *The Governor and Company of Copper Miners v. Fox*, 16 Q. B. 229; 20 L. J. (Q. B.) 174, where an action was brought in *assumpsit* by the company on a contract for the supply of iron rails to the defendant, averring mutual promises—plea *non assumpsit*. On the trial, the plaintiffs proved the making of the contract in fact; defendant proved a charter incorporating plaintiffs for the purpose of trading in copper ore, but containing nothing as to trading in iron. There was no evidence that the contract proved was in any way auxiliary to the trade in copper. It was held that the contract not being under seal, and not being for the trading purposes of the company for which they were incorporated, did not bind them, and that therefore the defendant was entitled to the verdict on the plea of *non assumpsit*, as there was no consideration for his promise. In this case, however, it was left undecided whether, if the contract had been under seal, it would have bound the company.

But the question has been decided elsewhere. "Where a corporation is created by an act of Parliament for particular purposes, with special powers, their deed, though under their corporate seal, and that regularly affixed, does not bind them, if it appear by the express provisions of the statute creating the corporation, or by necessary or reasonable inference from its enactments, that the deed was *ultrâ vires*:" (*Parke, B.*, in *South Yorkshire Railway and River Dun Co. v. Great Northern Railway Co.*, 9 Exch. 55, 84; 22 L. J. (Exch.) 305, 314.)

So where a railway company were incorporated "for the purpose of making and maintaining a particular railway," and for other purposes confined to acts to be done upon and relating to the railway, it was held that they were not liable in an action of covenant with another railway company with whom they had covenanted to take a lease of their railway, and to pay the costs of soliciting bills then pending in Parliament by which the plaintiffs were to be authorised

Allegation in bill where different line intended to be made.

Contracts void at law as *ultrâ vires*.

Copper company supplying iron.

Contracts *ultrâ vires* not under seal.

Covenant to take lease of another line and pay costs of bills, and to make extensions, &c.

82 Companies Clauses Consolidation Act, 1845, s. 90.

s & 9 VICT. c. 16. to make extensions of their railway, such covenant being beyond the scope of their authority as a corporation, and therefore illegal and void: (*East Anglian Railway Co. v. Eastern Counties Railway Co.*, 11 C. B. 775; 21 L. J. (C. P.) 23; see also *McGregor v. Deal and Dover Railway Co.*, 22 L. J. (Q. B.) 69; *Mayor of Norwich v. Norfolk Railway Co.*, 1 Jur. N. S. 344; 4 E. & B. 397; 24 L. J. (Q. B.) 165.)

Applications to Parliament: Wharmcliffe Order.

It is now well settled that if the Wharmcliffe Order be complied with, a company may apply to Parliament for an act authorising extensions of their line to purposes not contemplated by their original act, provided the object of such application be a lawful one, and lawfully pursued: (*Ware v. Grand Junction Waterworks Co.*, 2 Russ. & My. 470; *Vance v. East Lancashire Railway Co.*, 3 K. & J. 50; *Great Western Railway Co. v. Rushout*, 5 De G. & Sm. 290; 16 Jur. 238; *Stevens v. South Devon Railway Co.*, 13 Bea. 48; 7 R. C. 696; 20 L. J. (Ch.) 491; *Parker v. River Dun Navigation Co.*, 1 De G. & Sm. 192; *Spackman v. Lattimore*, 3 Giff. 16.)

Funds of company not to be used or pledged for the purpose.

But it is a recognised rule that the Court will not allow the funds of the company to be expended or pledged in the application to Parliament: *Simpson v. Denison*, 10 Hare, 51; 7 R. C. 403, 415; 16 Jur. 828; *Great Western Railway Co. v. Rushout*, 5 De G. & Sm. 290; 16 Jur. 238.)

Nor new shares issued for paying for application.

Nor may new shares be issued to pay the expenses of such applications; and an injunction to restrain the creation of shares, except as directed by the act, would in such a case be awarded; (*Vance v. East Lancashire Railway Co.*, 3 K. & J. 50.)

Railway company may not support bills of other parties, however beneficial.

It seems that to support a bill promoted by other parties, although its object might be beneficial to the company, would be illegal, and the application of the corporate funds for that purpose would be restrained.

Example: subscribing to future extensions of another company. Distinction between support of a bill and covenant not to oppose.

Thus the funds of a company cannot be applied for subscriptions to future extensions of another railway, without an act of Parliament authorising such an outlay: (*Maunsell v. Midland Great Western (Ireland) Railway Co.*, 1 H. & M. 130.)

Supporting beneficial bill.

And a covenant to assist a bill by another company is *ultra vires*, although it seems doubtful whether a covenant not to oppose is so: (*Ibid.*)

Applications to legalise agreements already made.

A railway company was, upon the grounds above stated, restrained from lending its support to a bill for improving the navigation of a river, although the railway communicated with the river, and the company had power to construct wharves on its banks: (*Munst v. Shrewsbury and Chester Railway Co.*, 13 Bea. 1; 20 L. J. (Ch.) 169.)

Opposing prejudicial bill.

But the Court will not interfere to prevent an application to Parliament to legalise an agreement already entered into for the amalgamation of two companies: (*Hattersley v. Earl of Shelburne*, 10 W. R. 881.)

Example.

But where the passing of a bill introduced by one corporation is likely to injure the works of another corporation, the latter would, it appears, be justified in opposing such bill, and applying its funds for the purpose of an effectual opposition.

Thus certain commissioners, invested with powers to do everything necessary for keeping the banks of a river in repair, were held authorised to oppose a bill of a company who intended to reclaim from the sea a large tract of land at the estuary of the river—a project which was thought likely to injure the works of the commissioners: (*Bright v. North*, 2 Ph. 216; 16 L. J. (Ch.) 255.)

In accordance with the principles noticed above, the Court of 8 & 9 VICT. c. 16. Chancery will grant an injunction to restrain the use of the company's funds, or the pledging of their credit in any way, for the purpose of promoting a bill in Parliament, but not to restrain the company from introducing or soliciting the bill, or from using the name or seal of the company with respect to such bill: (*Great Western Railway Co. v. Rushout*, 5 De G. & Sm. 290; 16 Jur. 238; *Winch v. Birkenhead, &c., Railway Co.*, 5 De G. & Sm. 580; 7 R. C. 384; and see Seton on Decrees, 3d ed. p. 925.)

No injunction to restrain soliciting bill, only expenditure of funds for the purpose.

And where the interests of certain classes of shareholders may be varied by a proposed bill, but the Court does not wish to pronounce an immediate opinion upon the merits, an injunction restraining the use of the present funds of the company for the purpose will be granted, and an undertaking required to be given by the directors or committee of management not to apply any further part of the funds of the company in any manner not directed by their act: (*Parker v. River Dun Navigation Co.*, 1 De G. & Sm. 192; *Stevens v. South Devon Railway Co.*, 13 Bea. 48; 7 R. C. 696; 20 L. J. (Ch.) 491.)

Undertaking as to not employing funds of company in the application.

An agreement having been made by a railway company that they will not by any future application to Parliament seek to alter their present constitution, in consequence of which opposition to the passing of their act has been withdrawn, does not prevent them from going to Parliament, upon public grounds, to show that the agreement is injurious to the community, and satisfy the legislature that a release from such an agreement would be beneficial by enabling them to apply for other powers: (*Stockton and Hartlepool Railway Co. v. Leeds and Thirsk Railway Co.*, 2 Ph. 666, 670; *Lancaster and Carlisle Railway Co. v. London and North-Western Railway Co.*, 2 K. & J. 293.)

Covenant not to apply to Parliament, how far binding.

According to the opinion, however, of Vice-Chancellor Wood, in the case last cited, the Court of Chancery would have jurisdiction to prevent such an application to Parliament to be released from an agreement of this nature, although its inability to control another tribunal would induce it to use such authority very sparingly.

Reluctance of the Court of Chancery to interfere with applications to Parliament.

Withdrawal of opposition to a bill, however, on condition of the company allowing their line to run in a particular direction, is no ground for an injunction to restrain the company from applying for parliamentary powers to abandon their line, upon discovering their incapacity to complete it: (*Heathcote v. North Staffordshire Railway Co.*, 2 M. & G. 100; 20 L. J. (Ch.) 82.)

Where company cannot complete line for benefit of persons who have withdrawn opposition on conditions.

Although it has been decided in some cases that agreements entered into by the directors of a company with another company, for the purpose of regulating the traffic upon the respective lines, are incident to the functions of a railway company, it may be gathered from the cases that no such agreement is valid, if it contain anything by which a delegation of the powers of one company to another, or a transfer of its property is contemplated.

Traffic agreements invalid if powers delegated.

The nature of and effect of such agreements will be found discussed under s. 87 of the Railways Clauses Act, 1845, *post*. It is necessary to refer to them in this place in order to show how the Court of Chancery will act in order to keep the contracts within their proper limits.

Railways Clauses Act, 1845, s. 87.

- 8 & 9 VICT. c. 16. Where the effect of an agreement appeared to be, that when a certain line was completed, it was to be handed over to another company, Lord Cranworth held that that would be *ultra vires*, as being a delegation of the functions imposed by the legislature; but he directed a case for the opinion of a court of law: (*Beman v. Rufford*, 1 Sim. N. S. 550; 7 R. C. 48.) [This case was not taken to law; but the agreement was upon the opinion of Lord Cranworth treated as invalid: (*Great Western Railway Co. v. Rushout*, 5 De G. & Sm. 290, 293.)]
- Where line when completed to be handed over to another company.
- Agreement for working and use of plant by another company for 99 years. So it was held, that an agreement by which the defendant company's line should be worked by the London and North-Western Railway Company, who were to use the defendants' property and plant, for a term of ninety-nine years, was *ultra vires*, since this could not be effected without a delegation or transfer of some of the powers and duties of the defendant company: (*Winch v. Birkenhead, Lancashire, and Cheshire Junction Railway Co.*, 7 R. C. 384; 5 De G. & Sm. 562.)
- Form of injunction. In this case an injunction was granted, not to restrain the entering into the agreement itself, but the giving over of the plant and property of either company to the other; and see *Charlton v. Newcastle, &c., Railway Co.*, *infra*.
- Agreement for running trains over respective lines until amalgamation. And the Court refused to sustain an agreement, the object of which was, that the traffic of one company should pass over the line of another company, until the passing of an act for the amalgamation of the two companies, and a division of their profits: (*Charlton v. Newcastle and Carlisle Railway Co.*, 5 Jur. N. S. 1096.)
- Form of injunction. Even in this case the form of injunction, as in *Winch v. Birkenhead, &c., Railway Co.*, (*ubi supra*), was not against the agreement itself, but against the alienation of the property of the defendants, and the mixing of their moneys with those of the other company.
- Rule stated in *Shrewsbury and Birmingham R. Co. v. London and North-Western R. Co.* The views of the various judges before whom the case of *Shrewsbury and Birmingham Railway Co. v. London and North-Western Railway Co.*, (16 Ben. 441; 2 M.N. & G. 324; 3 M.N. & G. 70; 4 De G. M. & G. 115; 6 H. L. 113) came, bear out the principle that agreements for the regulation of traffic only, provided they do not result in a delegation of powers or an alienation of property, although the agreement in that particular case was held invalid, on the ground, amongst others, that it was an agreement for a lease, the time for exercising the power to enter into which had not yet arrived.
- Agreement for dividing gross receipts of through traffic on two lines. And in another case, Sir W. P. Wood, V.-C., was not satisfied that a contract for regulating the terms upon which the through traffic upon two competing routes should be worked, and providing that the gross revenues derived from the through traffic should be divided by the Railway Clearing House in certain proportions, was not illegal: (*Hare v. London and North-Western Railway Co.*, 2 J. & H. 80; 30 L. J. (Ch.) 820.)
- Opinion of Vice-Chancellor Wood in these cases. The same learned judge, in a previous case, had observed that he was not quite sure that "an agreement by directors of one company in return for being entitled (for this is what it comes to) to carry traffic over their railway on to the line of another railway, to make out of the assets of their own company certain payments to the

latter, is void:" (*Lancaster and Carlisle Railway Co. v. London and North-Western Railway Co.*, 2 K. & J. 293.)

In a late case, which turned upon the construction of the same agreement as that which formed the subject of *Hare v. London and North-Western Railway Co.*, (*ubi supra*), Sir R. T. Kindersley, V.-C., decided, that whatever may have been the validity of the agreement as to the routes in existence at the time of entering into it, that agreement could not be held to apply to a line of railway constructed since that time: (*Midland Railway Co. v. London and North-Western Railway Co.*, L. R. 2 Eq. 524;) and his Honour said that he was of opinion, though not free from doubt, that it would be *ultrâ vires* of the board of directors of a railway company to enter into a contract fixing and regulating the *future traffic* which might be carried upon a line of railway which the company might thereafter be empowered to construct, and the profits of such traffic, so as to give to another railway company an interest in such traffic and profits: (*Ibid.* p. 531.)

It is a misappropriation of the funds of a railway company to take shares in another railway company without the authority of Parliament for that purpose expressly given: (*Salomons v. Laing*, 12 Bea. 377; 6 R. C. 289; 19 L. J. (Ch.) 269.)

Whether a railway company having been authorised to take shares in another railway company are entitled to take new shares allotted to the holders of other shares, is a matter of great doubt: (*Great Western Railway Co. v. Metropolitan Railway Co.*, 32 L. J. (Ch.) 382.)

There is, however, no doubt that the protection of an interest already acquired does not warrant the increasing of such interest without authority; and directors were held not to be justified in taking additional shares in order to assist another railway company in making their line: (*Salomons v. Laing*, 12 Bea. 377; 6 R. C. 289; 19 L. J. (Ch.) 225, 291.)

Although, in accordance with the principle laid down in *Foss v. Harbottle*, (2 Hare, 461; see *ante*, p. 72,) the Court will not interfere in matters relating to the internal regulation of the affairs of a company, and will not, therefore, restrain the issue of capital authorised to be raised; still it will not, in a suit properly framed, allow the issue of capital, however regularly the issue may be made, if it is intended to apply it to purposes not authorised by the act of Parliament.

Thus an injunction will be granted to restrain the application of capital raised by an issue of scrip to the construction of a line different from the prescribed line: (*Bagshaw v. Eastern Union Railway Co.*, 7 Hare, 114; 2 M.N. & G. 389; *ante*, p. 10.)

And the holder of such scrip may sue in respect thereof, although he be also an ordinary shareholder, since the right to protect his interest in the latter character is the very equity upon which he sues: (*Ibid.*)

Amongst other cases in which directors may be controlled in the exercise of their powers, the Court will, upon a bill properly framed, decree accounts with respect to expenses incurred by provisional directors of schemes which have proved abortive: (*Williams v. Salmond*, 2 K. & J. 463; *Apperley v. Page*, 1 Ph. 779; 4

Agreements with respect to future traffic on lines not yet authorised to be constructed.

Railway companies may not take shares in another company without authority.

Whether, having shares, they may accept new shares allotted to them.

May not increase their interest.

Application of capital to unauthorised purposes.

Application of scrip to construction of different line.

Remedy of scrip-holder if also ordinary shareholder.

Accounts of abortive schemes decreed.

s & 9 VICT. c. 16. R. C. 568; *Cooper v. Webb*, 4 R. C. 582; *Clements v. Bowes*, 1 Drew. 684.)

Allegations against directors of fraud to be specific, and not merely general. If it is sought in such cases to make the directors or provisional committee personally liable, general allegations of fraud are not sufficient to support the bill; such allegations must be clear and precise: (*Sibson v. Edgeworth*, 2 De G. & Sm. 73; but see *Apperley v. Page*, 1 Ph. 779; 4 R. C. 568; and *Cooper v. Webb*, 4 R. C. 582.)

Directors must not take personal advantage of their position. Director dealing in shares. For a case of misappropriation of funds by a committee of management of a company, repayment of the money misapplied being decreed, see *Bryson v. Warwick Canal Co.*, 4 De G. M. & G. 711.

Directors must not by virtue of their office acquire profits or advantages which otherwise they could not have obtained.

Thus a director who had earned large profits by dealing in the shares of a railway company, which he placed in the names of his nominees, was ordered to reimburse to the account of the company the profits thus made: (*Fork and North Midland Railway Co. v. Hudson*, 16 Bea. 485; 22 L. J. (Ch.) 529; see also *Doyle v. Muntz*, 5 Hare, 509; *Hodgkinson v. National Live Stock Insurance Co.*, 4 De G. & J. 422; 26 Bea. 473; *Preston v. Grand Collier Dock Co.*, 11 Sim. 327.)

Contracts by directors. Common seal does not bind if contract *ultra vires*. The cases with respect to agreements by directors will be found under s. 97, *post*, p. 89, *et seq.* It is necessary, however, here to notice that, although *prima facie* a company is bound by an agreement to which the common seal has been affixed, still if the agreement be *ultra vires* this rule cannot apply: (*Shrewsbury and Birmingham Railway Co. v. London and North-Western Railway Co.*, 6 H. L. 113.)

Arbitration clauses where contract *ultra vires*. If an agreement contain stipulations which the Court holds to be *ultra vires*, it will not give effect to a clause providing that disputes arising upon the agreement shall be referred to arbitration: (*Maunsell v. Midland Great Western (Ireland) Railway Co.*, 1 H. & M. 130.)

Question of fact sent to law. If the Court, in adjudicating upon cases of alleged abuse of power by directors, be of opinion that there is a question of fact to be tried, it will send a case for the opinion of the common-law judges,

Interim injunction. and, in a proper case, will grant an interim injunction in order to keep matters in a position in which, if the proceeding complained of is not pronounced illegal, it may be continued as originally proposed: (see *Shrewsbury and Birmingham Railway Co. v. London and North-Western Railway Co.*, 3 M'N. & G. 70; 7 R. C. 531; *Beman v. Rufford*, 1 Sim. N. S. 550; 7 R. C. 48; *Cory v. Farnmouth and Norwich Railway Co.*, 3 Hare, 593; 3 R. C. 542.)

No injunction if balance of inconvenience greater than advantage to plaintiff. Where, upon a bill charging misappropriation of funds and illegal use of powers by directors, the Court is of opinion that more mischief may be done by interference than by leaving matters to the protection provided by the legislature against disobedience to its enactment, no injunction will be granted: (see *Fielden v. Lancashire and Yorkshire Railway Co.*, 2 De G. & Sm. 531; *per* Lord Cranworth in *Shrewsbury and Chester Railway Co. v. Shrewsbury and Birmingham Railway Co.*, 1 Sim. N. S. 410; 20 L. J. (Ch.) 574; *Cory v. Farnmouth and Norwich Railway Co.*, 3 Hare, 593; 3 R. C. 524; *Rogers v. Oxford, Worcester, and Wolverhampton Railway Co.*, 2 De G. & J.

182; per Sir J. L. Knight Bruce in *Hodgson v. Earl Powis*, 7 R. C. 8 & 9 VICT. c. 16, 436.)

Persons having otherwise a good right to complain of the proceedings of directors, will be precluded from asserting such right if they have allowed much time to elapse, or if, by their silence, they may be taken to have acquiesced in the proceedings they seek to impeach.

Thus in a suit by a shareholder against the company and directors, seeking to restrain the construction of part only of the line, and the making of calls and loans for that purpose, it was held on appeal that although the proceedings were illegal, the plaintiff might by inquiry have ascertained long previously that the whole line could not possibly be completed: (*Graham v. Birkenhead, Lancashire, and Cheshire Junction Railway Co.*, 2 M'N. & G. 145; 7 R. C. 938.)

So where the plaintiff complained that he could not oppose a bill introduced into Parliament for the abandonment of part of a railway scheme, as the seal of the company had been affixed, and he was therefore, as a member of the corporate body, bound by their act, the Court held him to be concluded by laches, since he had known of the intention to introduce the bill for three months before the petition was deposited: (*Cooper v. Earl of Powis*, 3 De G. & Sm. 488.)

And acquiescence for forty-seven years to a lease granted by a canal company of the tolls of the canal, disentitled the plaintiffs to relief: (*Gray v. Chaplin*,* 2 Russ. 126; 2 S. & S. 267. See also *Shupart v. Arrowsmith*, 3 Sm. & Giff. 176; *Kent v. Jackson*, 14 Bea. 267; 2 De G. M. & G. 49; *Ex parte Morgan*, 1 H. & T. 320; 1 M'N. & G. 223; *Gregory v. Patchett*, 33 Bea. 595.)

XCI. Except as otherwise provided by the special act, the following powers of the company, (that is to say,) the choice and removal of the directors, except as hereinbefore mentioned, and the increasing or reducing of their number where authorised by the special act, the choice of auditors, the determination as to the remuneration of the directors, auditors, treasurer, and secretary, the determination as to the amount of money to be borrowed on mortgage, the determination as to the augmentation of capital, and the declaration of dividends, shall be exercised only at a general meeting of the company.

PROCEEDINGS AND LIABILITIES OF DIRECTORS.

And with respect to the proceedings and liabilities of the directors, be it enacted as follows:

XCII. The directors shall hold meetings at such times

* It was said in this case that, as the interest of the public cannot be affected by laches, had the Attorney-General been made a party, the relief prayed might perhaps have been granted.

8 & 9 VICT. c. 16. as they shall appoint for the purpose, and they may meet and adjourn as they think proper from time to time and from place to place; and at any time any two of the directors may require the secretary to call a meeting of the directors, and in order to constitute a meeting of directors there shall be present at the least the prescribed quorum, and when no quorum shall be prescribed there shall be present at least one-third of the directors; and all questions at any such meeting shall be determined by the majority of votes of the directors present, and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as one of the directors.

Permanent chairman of directors.

XCIII. At the first meeting of directors held after the passing of the special act, and at the first meeting of the directors held after each annual appointment of directors, the directors present at such meeting shall choose one of the directors to act as chairman of the directors for the year following such choice, and shall also, if they think fit, choose another director to act as deputy chairman for the same period; and if the chairman or deputy chairman die or resign, or cease to be a director, or otherwise become disqualified to act, the directors present at the meeting next after the occurrence of such vacancy shall choose some other of the directors to fill such vacancy; and every such chairman or deputy chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such death, resignation, removal, or disqualification had not happened.

Occasional chairman of directors.

XCIV. If at any meeting of the directors neither the chairman nor deputy chairman be present the directors present shall choose some one of their number to be chairman of such meeting.

Committees of directors.

XCV. It shall be lawful for the directors to appoint one or more committees, consisting of such number of directors as they think fit, within the prescribed limits, if any, and they may grant to such committees respectively power on behalf of the company to do any acts relating to the affairs of the company which the directors could lawfully do, and which they shall from time to time think proper to intrust to them.

Powers of committees.

XCVI. The said committees may meet from time to time, and may adjourn from place to place, as they think proper, for carrying into effect the purposes of their appointment; and no such committee shall exercise the powers intrusted to them except at a meeting at which there shall be present the prescribed quorum, or if no quorum be prescribed then a quorum to be fixed for that purpose by the general body of directors; and at all meetings of the committees one of the members present shall be appointed chairman; and all questions at any meeting of the committee shall be determined by a majority of votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as a member of the committee.

8 & 9 Vict. c. 16.
Meetings of
committees.

XCVII. The power which may be granted to any such committee to make contracts, as well as the power of the directors to make contracts on behalf of the company, may lawfully be exercised as follows; (that is to say.) (b)

Contracts by
committee or
directors, how to
be entered
into (a).

With respect to any contract which, if made between private persons, would be by law required to be in writing, and under seal, such committee or the directors may make such contract on behalf of the company in writing, and under the common seal of the company, and in the same manner may vary or discharge the same:

With respect to any contract which, if made between private persons, would be by law required to be in writing, and signed by the parties to be charged therewith, then such committee or the directors may make such contract on behalf of the company in writing, signed by such committee or any two of them, or any two of the directors, and in the same manner may vary or discharge the same:

With respect to any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, such committee or the directors may make such contract on behalf of the company by parol only without writing, and in the same manner may vary or discharge the same:

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding

S & 9 VICT. c. 16. upon the company and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be; and on any default on the execution of any such contract, either by the company or any other party thereto, such actions or suits may be brought, either by or against the company, as might be brought had the same contracts been made between private persons only.

Doctrine in equity as to contracts by directors with a member of the board. (a) The office of directors being a position of trust, contracts with one of their body cannot it seems be enforced in equity: (*Aberdeen Railway Co. v. Blakie*, 1 M'Q. 461.)

Contract not void, but vacates director's office. At law, however, a contract entered into with a director is not void, but the effect of his entering directly or indirectly into such a contract is to vacate his office: (see ss. 85, 86, *ante*, pp. 69, 70); (*Foster v. Oxford, &c., Railway Co.*, 13 C. B. 200; 22 L. J. (C. P.) 99.)

Contracts by promoters. The cases of contracts between promoters of railway companies and landowners, will be found in the notes to s. 6 of the *Lands Clauses Act, 1845, post*.

When binding, though informal. An informal agreement of this nature would be binding upon the company after its incorporation, only if it is not *ultra vires* of the company, or if the company have taken the benefit of it: (*Gooday v. Colechester and Stour Valley Railway Co.*, 17 Bea. 132; 7 R. C. 375;) and see as to use and occupation at law, *Lowe v. London and North-Western Railway Co.*, 21 L. J. (Q. B.) 361; *Finlay v. Bristol and Exeter Railway Co.*, 21 L. J. (Ex.) 117; 7 Ex. 409.

Use and occupation. (b) Directors of railway companies must conform strictly in the making of contracts with the rules laid down in s. 97, and the absence of the necessary formalities will deprive a person entering into an agreement with them of the right to a decree for specific performance: (*Leominster Canal Navigation Co. v. Shrewsbury and Hereford Railway Co.*, 3 K. & J. 654; 26 L. J. (Ch.) 764.)

Contracts by directors. "Persons dealing with these companies should always bear in mind that such companies are a corporation, and essentially different from an ordinary partnership or firm, for all purposes of contracts, and especially in respect of evidence against them on legal trials, and should insist upon these contracts being by deed under the seal of the company, or signed by directors in the manner prescribed by the act of Parliament. There is no safety or security for any one dealing with such a body on any other footing. The same observation also applies in respect of any variation or alteration in a contract which has been made."—*Per Martin, B. in Williams v. Chester and Holyhead Railway Co.*, 15 Jur. (Exch.) 828.

No specific performance of informal contracts. The contracting party should, therefore, see that the contract has been properly executed; and if a resolution has been necessary to authorise the directors to make such a contract, he should ascertain that such resolution has been duly passed: (*Athenæum Life Assurance Co. v. Pooley*, 28 L. J. (Ch.) 119.)

Contracts with corporations. A mere resolution, however, passed by the members of a company will not stand in the place of an agreement under s. 97, and will not warrant a decree for specific performance: (*Leominster Canal Navigation Co. v. Shrewsbury and Hereford Railway Co.*, 3 K. & J. 654; 26 L. J. (Ch.) 764.)

Resolutions.

A resolution alone forms no binding contract.

It has been held in Ireland that a notice to treat, coupled with an agreement not under seal, is a sufficient and binding contract as between a railway company and a landowner: (*Smith v. Dublin and Bray Railway Co.*, 3 Ir. Ch. Rep. 225; and see *Att.-Gen. v. Ball*, 10 Ir. Eq. Rep. 146.)

Effect of notice to treat with landowners.

As to the effect of a notice to treat, and its general binding nature as between railway companies and landowners, see the notes to s. 18 of the Lands Clauses Act, 1845, *post*.

Lands Clauses Act, s. 18.

Where a contract is made in anticipation of an act of Parliament authorising the things agreed to be done, the contract should not leave it to the act to ratify its provisions, but should itself be made conditional upon the passing of the act: (*Leominster Canal Navigation Co. v. Shrewsbury and Hereford Railway Co.*, 3 K. & J. 654; 26 L. J. (Ch.) 764.)

Contract ratified by act of Parliament.

It would appear that strictly, in order to enable an agent to enter into a contract for the sale of land, or for the construction of works, he should have been appointed by some instrument under the corporate seal: (*London and Birmingham Railway Co. v. Winter*, Cr. & Ph. 57; *Laird v. Birkenhead Railway Co.*, Johns. 500; *Wilson v. West Hartlepool Railway and Harbour Co.*, 34 Bea. 187; 2 De G. J. & Sm. 475; 5 N. R. 289.)

Agents should be appointed under common seal.

Prima facie the general manager of a railway company is not an agent of the company duly authorised to enter into contracts on their behalf; but, according to the opinion of the Master of the Rolls, if he has been held out to the world as such, and the company have acquiesced in his acts, he can bind the company without an appointment under seal for that purpose: (*Wilson v. West Hartlepool Railway and Harbour Co.*, 34 Bea. 187.)

General manager not *ex officio* agent of company.

Where a person acts as agent for a railway company in the purchase or sale of land, but not appointed under the corporate seal, and the company, or the purchaser from them, as the case may be, is let into possession, that is an act of part performance, which will ratify the contract and make it binding on the parties: (*Mayor of Stafford v. Till*, 4 Bing. 75; *London and Birmingham Railway Co. v. Winter*, Cr. & Ph. 57, 63; *Wilson v. West Hartlepool Railway and Harbour Co.*, 34 Bea. 187; 2 De G. J. & Sm. 475; 5 N. R. 289.)

Part performance.

A railway company, having entered into a contract with a person who was desirous to have a communication with their line, but all the terms not having been settled between the parties, was held to be bound by the contract after an acquiescence of more than two years, the course of proceeding in that time was held to fix the provisions of the agreement, and objections on the ground of non-compliance with the requirements of s. 97, and of the Statute of Frauds, were overruled: (*Laird v. Birkenhead Railway Co.*, Johns. 500.)

Acquiescence.

On a similar ground, where a sale of surplus lands by a railway company had been agreed upon by an unauthorised agent on the part of the company, it was not competent for them two years afterwards to repudiate the contract, on the ground that they required the land for their own purposes: (*Wilson v. West Hartlepool Railway and Harbour Co.*, 34 Bea. 187; 2 De G. J. & Sm. 475; 5 N. R. 289.)

Where additional terms or variations of a written agreement become necessary, the same formalities as are required for the validity of the original contract, should be observed: (*Kirk v. Bromley*)

Variations of written agreement should be made with all the statutory forms.

92 *Companies Clauses Consolidation Act, 1845, s. 97.*

§ 9 VICT. c. 16. *Union*, 2 Ph. 640; *Ambrose v. Dunmow Union*, 9 Bea. 508; *Jackson v. North Wales Railway Co.*, 6 R. C. 112; 1 H. & T. 75; 18 L. J. (Ch.) 91; *Williams v. Chester and Holyhead Railway Co.*, 15 Jur. (Exch.) 828.)

Tender acted upon without written agreement. If works are executed upon the faith of a mere tender, and no formal agreement has been entered into, the absence of writing will be no reason for relief in equity; nor are the directors trustees for the contractor, because they may have money in hand wherewith they might pay him: (*Jackson v. North Wales Railway Co.*, 6 R. C. 112; 1 H. & T. 75; 18 L. J. (Ch.) 91.)

Adoption by both parties of subsequent conditions. Subsequent adoption by both parties would bind them to observe terms imported to vary the contract: (*London and Birmingham Railway Co. v. Winter*, Cr. & Ph. 57.)

Inquiry as to variations. And as in any case the defendant is at liberty to set up a variation of a written contract so as to defeat the plaintiff's right to specific performance, in the discretion of the Court, (*Joyes v. Statham*, 3 Atk. 388; *Townshend v. Stangroom*, 6 Ves. Jr. 328; *Ramsbottom v. Gadsden*, 1 V. & B. 165.) an inquiry as to such terms would be granted: (*London and Birmingham Railway Co. v. Winter*, Cr. & Ph. 57, 62.)

Contracts for constructing railways. With respect to the jurisdiction exercised by the Court of Chancery in matters relating to contracts for the execution of the line and works of a railway company:—

No specific performance as remedy complete at law. It may be stated generally that a court of equity will not decree specific performance of a contract to construct a railway, the remedy being complete at law: (See *Ranger v. Great Western Railway Co.*, 1 R. C. 1; 3 R. C. 298; 5 H. L. 72; *Nixon v. Taff Vale Railway Co.*, 7 Hare, 136; 1 H. L. 111; *Jackson v. North Wales Railway Co.*, 6 R. C. 112; 1 H. & T. 75; 18 L. J. (Ch.) 91; *Johnson v. Shrewsbury and Birmingham Railway Co.*, 3 De G. M. & G. 914; *South Wales Railway Co. v. Wythes*, 1 K. & J. 186; 5 De G. M. & G. 880; *Munro v. Wivenhoe and Brightlingsea Railway Co.*, 11 Jur. N. S. 612; 13 W. R. 880; 12 L. T. N. S. 655.)

Jurisdiction in equity in case of complicated accounts. But where the remedy at law would not be complete, as in cases where complicated accounts would have to be taken, the Court of Chancery will exercise its discretion to admit the parties to account before it: (*Nixon v. Taff Vale Railway Co.*, 7 Hare, 136; 1 H. L. 111; *M'Intosh v. Great Western Railway Co.*, 2 De G. & Sm. 758; 3 Sm. & G. 146; 2 H. & T. 250; 2 M. N. & G. 74; 18 L. J. (Ch.) 94; 19 L. J. (Ch.) 374; *Waring v. Manchester, Sheffield, and Lincolnshire Railway Co.*, 7 Hare, 482; *Hill v. South Staffordshire Railway Co.*, 11 Jur. N. S. 192; 12 L. T. N. S. 63; and see *O'Connor v. Spright*, 1 Sch. & Lef. 257.)

Secus, where accounts not complicated. It seems that such jurisdiction would not be exercised in cases where the accounts are not of a complicated nature: (*Foley v. Hill*, 2 H. L. 28.)

Concurrent jurisdiction as to account. That the Court of Chancery has a concurrent jurisdiction in matters of account with the Courts of Common Law, see *Hill v. South Staffordshire Railway Co.*, 11 Jur. N. S. 192; 12 L. T. N. S. 63.

Form of decree for account of works. For the form of decree upon a bill for an account of works executed by a contractor for a railway, see *M'Intosh v. Great Western Railway Co.*, 3 Sm. & G. 146; *Ranger v. Great Western Railway Co.*, 3 R. C. 335.

Contracts to construct Railways—Engineer's Certificate. 93

It is usual to insert into contracts between a railway company and the person employed to construct their line provisions that the work shall be done to the satisfaction of the company's engineer, who is periodically to certify the amount of work done, in order to ascertain the proportion of the whole sum for the time being payable to the contractor for the construction of the line.

[For forms of clauses of this nature, see the cases cited upon this subject below; and generally for forms of railway contracts, see Davidson's Precedents in Conveyancing, vol. ii. part i. pp. 149 and 158, (3d edit.)]

The following case may be cited on the construction of a contract made by a railway company for goods to be delivered according to directions. The contract under seal recited that the company "were desirous of being supplied with 350,000 sleepers." The contract was based on a specification prepared by the company, which stated that "the number of sleepers required under this specification is 350,000—one-half will have to be delivered in 1847, and the remainder by midsummer 1848, the deliveries to be made as may be directed by the resident engineer." By the contract, the plaintiffs covenanted to supply and deliver at times mentioned, to the company, the sleepers, "as, when, and in what quantities, and in such manner as the engineer should, by order or requisition in writing within the time limited, direct or require." The engineer was to be at liberty to alter the size and form of undelivered sleepers; and there were covenants for payment. The Court of Exchequer Chamber held, affirming the judgment of the Court below, that this was a positive contract by the plaintiffs to supply, and by the defendants to take and to pay for the whole number of 350,000 sleepers; and that the plaintiffs were entitled to notice of the times when the sleepers would be required: (*The Great Northern Railway Co. v. Harrison*, 11 C. B. 815; 12 C. B. 576.)

Where a contract was for the supply of the best coke, "to be to the satisfaction of the company's inspecting officer for the time being," it was held, in an action against the company for refusal to accept, that the satisfaction of the inspecting officer was a condition precedent to the right of the plaintiffs to insist upon the defendant's acceptance; and that the declaration was bad for omitting that allegation: (*Grafton v. Eastern Counties Railway Co.*, 8 Exch. 699.)

As to the right of determining the contract, if the work be not proceeded with to the employer's "satisfaction," see *Stadhard v. Lee*, 32 L. J. (Q. B.) 75.

A certificate of approval need not, unless so specified by the terms of contract, be in writing: (*Roberts v. Watkins*, 32 L. J. (C. P.) 291; 14 C. B. N. S. 592.)

A fixed time being provided in the contract for the completion of the works, the company cannot render the contractor liable for branch of contract if, through their own act, the company or their engineer impede the regular course of construction.

Thus, if it can be shown that the engineer has wrongfully withheld or deferred the granting of certificates for work actually done, although a remedy at law may not exist, still equity will give relief in the form of an account, and demurrers by the company to bills for this purpose have been overruled: (*M'Intosh v. Great Western*)

Engineer's certificate for work done.

Forms of railway contracts.

Delivery of goods according to directions of engineer.

Certificate in writing.

Liability of contractor to complete at fixed time.

Wrongful refusal of, or delay in giving, certificates.

94 *Companies Clauses Consolidation Act, 1845, s. 97.*

s & 9 VICT. c. 16. *Railway Co.*, 2 De G. & Sm. 764; 2 M'N. & G. 74; 2 H. & T. 250; 18 L. J. (Ch.) 94; 19 L. J. (Ch.) 374; *Waring v. Manchester, Sheffield, and Lincolnshire Railway Co.*, 7 Hare, 482; *Johnston v. Shrewsbury and Birmingham Railway Co.*, 3 De G. M. & G. 914; *Munro v. Wivenhoe and Brightlingsea Railway Co.*, 11 Jur. N. S. 612; 12 L. T. N. S. 655; 13 W. R. 880.)

Delay ordered by engineer. Where the engineer ordered some of the works to be delayed, the Court directed an account: (*Waring v. Manchester, Sheffield, and Lincolnshire Railway Co.*, 7 Hare, 482.)

Acquiescence of company in construction of extra works. And if the company stand by and allow the contractor to construct works of the kind called extra works, which are subject to the opinion of the engineer as to their necessity, the Court will not permit the contractor to suffer by the repudiation of such works by the company: (*Hill v. South Staffordshire Railway Co.*, 11 Jur. N. S. 192; 12 L. T. M. S. 302; but see *Homersham v. Wolverhampton Waterworks Co.*, 6 Exch. 137.)

Bankruptcy of, or non-performance by, contractor. A stipulation that, in case the contractor becomes insolvent, or fails in the due performance of the contract, the company may enter and use his plant and materials, and construct the line on their own account, does not, on such insolvency or failure, vest the plant and materials in the company, unless actual damage or loss had been occasioned by the non-completion of the works: (*Garrett v. Salisbury and Dorset Railway Co.*, L. R. 2 Eq. 358.)

Intricate disputes between company and contractor not decided till the hearing. Where the disputes between the contractor and the company are of an intricate nature, and much inconvenience might be caused by the granting of an interlocutory injunction to restrain the company from enforcing their rights in default of performance of the contract, the questions will be left for decision at the hearing: (*Garrett v. Banstead and Epsom Downs Railway Co.*, 11 Jur. N. S. 591; and see *Munro v. Wivenhoe and Brightlingsea Railway Co.*, 11 Jur. N. S. 612; 13 W. R. 880; 12 L. T. N. S. 655.)

Effect of arbitration clauses in railway contracts. As to whether a clause providing that certain questions shall be referred, to the exclusion of the authority of the Court, can be relied on as a defence to an action, see *Scott v. Avery*, 5 H. L. 811; *Horton v. Sayer*, 4 H. & N. 643.

Engineer judge of quality, but not of quantity. It has been decided that the engineer is the judge only of the quality and not of the quantity of the work done, the latter being the proper function of a Court of Equity: (*Ranger v. Great Western Railway Co.*, 3 R. C. 298.)

Certificate condition precedent to right to payment. But, notwithstanding this, it seems that the engineer's certificate is a condition precedent to the right to payment for work done by the contractor: (*Scott v. Corporation of Liverpool*, 1 Giff. 216; 3 De G. & J. 334; 27 L. J. (Ch.) 641; 28 L. J. (Ch.) 230; and see *Grafton v. Eastern Counties Railway Co.*, 8 Exch. 699.)

Where engineer lessee of line. If the engineer is a person interested in the railway itself, as, if he be lessee of the line to be made, (*Hill v. South Staffordshire Railway Co.*, 11 Jur. N. S. 192; 12 L. T. N. S. 655; 13 W. R. 880.) or a shareholder in the company, (*Ranger v. Great Western Railway Co.*, 3 R. C. 298.) his authority has been held not to be thereby affected.

Miscellaneous contracts: For supplying rolling-stock. With respect to contracts for supplying rolling-stock, with provisions for deductions on account of depreciation, &c., see *Midland Great Western (Ireland) v. Johnston*, 6 H. L. 798; for leases of book-stalls, and the rights of lessees thereunder, see *Holmes v. Eastern*

Counties Railway Co., 3 K & J. 675; and of refreshment-rooms, and the right of lessees to have trains stopped at the station, see *Rigby v. Great Western Railway Co.*, 4 R. C. 175, 491. 8 & 9 Vict. c. 16.

The general rule of law, that a corporation can contract only by an instrument under seal, is subject to two exceptions: first, where the acts are such as a corporation is appointed to do, such as the drawing bills of exchange by a trading company; secondly, where convenience requires that they should be able to do certain acts, as, for instance, to appoint a servant, and other trivial acts, which in practice could not be done at all if the affixing of a seal were required on every occasion. There is still another class of cases, viz., where there exists an overruling necessity of doing some act of importance: (*Per* Alderson, B. in *Diggle v. London and Blackwall Railway Co.*, 5 Exch. 442; 19 L. J. (Exch.) 308.) Thus it has been held that a railway company cannot in general contract for an interest in land except under seal: (*Lowe v. London and North-Western Railway Co.*, 21 L. J. (Q. B.) 361;) and it can only be made responsible in an action for use and occupation of premises for the period of actual occupation; and a continuous occupation for several years will not render them tenants from year to year: (*Finlay v. Bristol and Exeter Railway Co.*, 7 Exch. 409; 21 L. J. (Exch.) 117.) The former of these cases is, however, an authority to show that the fact of the company deriving benefit from a contract is evidence of their having entered into it; and though it was held that a railway company had no power to enter into a parol contract for the use and occupation of land, yet they were held liable to be sued *in assumpsit* for use and occupation during the time they had actually occupied the land, notwithstanding that the directors had not entered into the contract under their common seal, such a parol contract being implied as under this section they might have entered into. This case was followed in *Pauling v. London and North-Western Railway Co.*, 8 Exch. 867, which is to the same effect; see also *Church v. Imperial Gas Co.*, 6 A. & E. 846; *Mayor of Ludlow v. Charlton*, 6 M. & W. 815; *Eastern Counties Railway Co. v. Broom*, 6 Exch. 314; 20 L. J. (Ex.) 196.

But where it appeared that a contract had been entered into on the basis of a letter written by the secretary of a company, who had no independent authority to bind the company, and there had been a delivery and acceptance and part payment of the goods under the contract, it was held that the company might avoid it: (*Williams v. Chester and Holyhead Railway Co.*, 15 Jur. 828.)

It has always been an exception to the rule that a corporation can only express its will under its common seal, that it may transact trifling business, and enter into such ordinary contracts as are matters of constant recurrence, the making of which forms part of its customary functions, without the employment of it: (*Mayor of Ludlow v. Charlton*, 6 M. & W. 815.) The cases which have decided what acts do or do not come under this exception are too numerous and of too special a character to require more than a reference in this place. Some of them have elsewhere been more particularly noticed. See *Mayor of Carmarthen v. Lewis*, 6 C. & P. 608; *Finlay v. Bristol and Exeter Railway Co.*, 7 Exch. 416; 21 L. J. (Exch.) 117; *De Graze v. Mayor, &c., of Monmouth*, 4 C. & P. 111; *Reg. v.*

Refreshment
rooms.

Rule as to con-
tracts under seal.

Where seal not
required.

Trivial acts.

Contracts for in-
terest in land.

Use and occupa-
tion.

Where company
has derived
benefit.

Delivery of goods
on faith of letter
by secretary.

Ordinary con-
tracts not under
seal.

96 *Companies Clauses Consolidation Act, 1845, s. 97.*

8 & 9 VICT. c. 16. *Mayor of Stamford*, 6 Q. B. 433; *London Dock Co. v. Sinnott*, 8 E. & B. 347; *Paine v. Strand Union*, 8 Q. B. 326; 10 Jur. 308; *Lamprell v. Billericay Union*, 3 Exch. 307; *Governor of Copper Miners v. Fox*, 16 Q. B. 229; 20 L. J. (Q. B.) 174; *Homersham v. Wolverhampton Waterworks Co.*, 6 Exch. 137; 20 L. J. (Exch.) 193; *Beverley v. Lincoln Gas-Light Co.*, 6 A. & E. 829. Where iron gates and water-closets were made and erected at a union workhouse, pursuant to a verbal order given by the guardians, it was held that they were liable for the price of them, as they were necessary for carrying out the purposes of the corporation: (*Sandars v. Guardians of St Neots*, 8 Q. B. 810; 15 L. J. M. C. 104;) and it was laid down by the Court of Queen's Bench in a later case, as a general rule of law, that wherever the purposes for which a corporation is created render it necessary that work should be done and goods supplied to carry such purposes into effect, and orders are given at a board regularly constituted, and having general authority to make contracts for work or goods, and the work is done and the goods then supplied and accepted by the corporation, and the whole consideration for payment executed, the corporation cannot keep the goods or the benefit, and refuse to pay on the ground that though the members of the corporation who ordered the goods or work were competent to make a contract to bind the rest, the formality of a deed or the affixing of the seal was wanting, and that therefore no action would lie: (*Clarke v. Guardians of Cuckfield Union*, 21 L. J. (Q. B.) 349; and the tendency of the law is to extend the principle of these decisions: (see in *Walker v. Great Western Railway Co.*, 2 L. R. (Exch.) 228.)

Appointment of agents.

Where the services to be rendered to the company are of a special or peculiar character, the appointment of those employed to render them must be made, as a general rule, under the company's seal. Thus a plaintiff, who had been appointed, by a resolution, agent for a railway company, to negotiate with another railway for the leasing of the line of the company, was held not entitled to recover for his services in respect of such negotiation: *Cope v. Thames Haven, Dock, and Railway Co.*, 3 Exch. 841; 18 L. J. (Exch.) 345; and see also *Diggle v. London and Blackwall Railway Co.*, 19 L. J. (Exch.) 308; *Cox v. Midland Railway Co.*, 3 Exch. 268; 18 L. J. (Exch.) 65.)

In this latter case the question was discussed as to how far station-masters, clerks, and others employed by a railway company have authority to enter into contracts in respect of matters not incident to their employment, and it was decided that a stationmaster had no authority to contract with a surgeon for services rendered to a passenger who had been injured. This case, however, was considered in the very recent one of *Walker v. Great Western Railway Co.*, 2 L. R. (Exch.) 228, where it was held that the general manager of a railway company has an implied authority incidental to his employment to bind the company for surgical attendance bestowed at his request on a servant of the company injured on their railway; *Martin, R.*, remarking on it, "When that case was decided, it was generally supposed that a company, except in some very few cases of daily recurrence, could only contract under seal. But there has been much more freedom in this respect accorded to companies since the time of that decision."

See further, as to the authority of agents to bind their principals 8 & 9 VICT. c. 16, by acts out of the scope of their authority, *Barnes v. Pennell*, 2 H. & C. 497; *Olding v. Smith*, 16 Jur. 497; and *ante*, p. 91.

Where a contractor had entered into a contract under seal with a railway company for the execution of certain works, according to the terms of a specification annexed, which also contained provisions for extra work, and he entered on the work under the superintendence of the company's engineer, and with his approbation executed certain extra works, which, however, could not be considered as within the provisions of the contract, it was held that the company were not liable to him for the extra work so performed: (*Homersham v. Wolverhampton Waterworks Co.*, 6 Exch. 137.)

Where by the deed of a settlement it was provided that all contracts above a certain value entered into by a company should be signed by three directors, or be under the common seal of the company, with the authority of a special meeting, and the company were sealed on an agreement above the prescribed value made by parol with the chairman, and the plaintiff had recognised the agreement in correspondence with the secretary, and had received payments for it, which were audited and allowed in the accounts of the company, it was held that the contract was ratified by and binding on the company: (*Reuter v. Electric Telegraph Co.*, 6 E. & B. 341; 26 L. J. (Q. B.) 46.)

As the appointment of an attorney to a corporation must be made under seal, (*Arnold v. Mayor of Poole*, 4 M. & G. 860; *Mayor of Bedford's Case*, 1 Salk. 191; 2 Raym. 848,) so it must be in the case of a railway company; but it was held that the submission by the attorney of a railway company of a claim against them was valid, though he had no authority under seal to defend or to refer the case: (*Faviell v. Eastern Counties Railway Co.*, 2 Exch. 344;) and in such a case the company are estopped, he having appeared for them, from saying that he was not properly appointed: (*per Platt, B.*, *ibid.*;) and unless there is something disclosed to show that the attorney was not appointed under seal, he will be presumed to have been so appointed: (*Thames Haven, Dock, and Railway Co. v. Hall*, 5 M. & G. 274; and see *R. v. Justices of Cumberland*, 5 R. C. 332; 5 D. & L. 431.)

As to what proceedings of directors in the appointment of agents and officers must be under the seal of the company, see further *Reg. v. Mayor of Stamford*, 6 Q. B. 433; *Henderson v. Australian Steam Navigation Co.*, 5 E. & B. 409; 24 L. J. (Q. B.) 322; *Governor and Co. of Copper Miners v. Fox and Others*, 20 L. J. (Q. B.) 174; 16 Q. B. 236; *London Dock Co. v. Sinnott*, 8 E. & B. 347; 26 L. J. (Q. B.) 169; and *ante*, pp. 91 and 96.)

The appointment, however, of ordinary servants need not be under the seal of the company: (*Cope v. Thames Haven, Dock, and Railway Co.*, 3 Exch. 841; 18 L. J. (Exch.) 345; *Giles v. Taff Vale Railway Co.*, 2 E. & B. 822.)

At law if an executory contract, founded upon mutuality of liability and obligation, be not binding on the company, by reason of its not being under the seal of the company, it cannot be enforced by the company by reason of the reciprocity of liability and obligation: (*Governor and Co. of Copper Miners v. Fox*, 20 L. J. (Q. B.) 176; 16 Q. B. 229.)

Limitation
as to value of
contracts by
directors.

Reference of
claim by attorney
of company.

Estoppel.

Presumption
that attorney
appointed under
seal.

Ordinary
servants
not appointed
under seal.

Mutuality of
obligation.

8 & 9 Vict. c. 16.

Acceptance of
bills of exchange
by railway
companies.

The important question whether it is competent to a railway company to accept bills of exchange, received a decision, after careful argument, in the recent case of *Bateman v. Mid Wales Railway Co.* L. R. 1 (C. P.) 499; 35 L. J. (C. P.) 205; 14 W. R. 672, where all the previous cases on the common law of contracts, *ultra vires* of a company were examined. There the declaration charged the company as the acceptors of several bills of exchange, drawn by J. W. & Co., and purporting to be accepted in the following form:—"Accepted by order of the board of directors, and payable at the Agra and Masterman's Bank, John Wade, secretary," with the seal of the company annexed. It was admitted that the company had actually commenced business as a railway company, and that there had been a resolution of a board of directors authorising the acceptance of the bills in question. It was held that a plea of non-acceptance properly raised the question of the competence of the company to accept, and that it is not competent to a company, incorporated in the usual way for the formation and working of a railway company, to draw, accept, or indorse bills of exchange. Three instances only were cited of the acceptances of negotiable instruments by corporations having been binding. These were distinguished as exceptions to the general rule that in general a corporation cannot be liable on such instruments; and on the question of principle, Erle, C. J., remarks:—"The question then is, whether this company, being a corporation created for the specific purpose of making a railway, can lawfully bind itself by accepting a bill of exchange. I am of opinion that it cannot. The bill of exchange is a cause of action, a contract by itself which binds the acceptor in the hands of any indorsee for value; and I conceive it would be altogether contrary to the principles of the law which regulates such instruments that they should be valid or not, according as the consideration between the original parties was good or bad—or whether, in the case of a corporation, the consideration in respect of which the acceptance is given is sufficiently connected with the purposes for which the acceptors are incorporated. It would be inconvenient to the last degree if such an inquiry could be gone into. Some bills might be given for a consideration which was valid, as for work done for the company, and others as a security for money obtained on loan beyond their borrowing powers. It would be a pernicious thing to hold that, in respect of the former, the corporation might be sued by an indorsee, but in respect of the latter not." And see the judgment of Crompton, J., in *Chambers v. Manchester and Milford Railway Co.*, 10 Jur. N. S. 700; 33 L. J. (Q. B.) 268; *Steele v. Harmer*, 14 M. & W. 831. See also upon this subject *Peruvian Railway Co. v. Thames and Mersey Marine Insurance Co.*, L. R. 2 Ch. App. 619; 15 W. R. 708; 16 L. T. N. S. 315.

Cheques.

Where a cheque on the company's bankers, for payment to a third party of the company's money, was drawn by three directors in the name of the company, but the cheque was signed by them in their own names, and countersigned by the secretary of the company adding to his name "secretary," and a stamp bearing the name of the company was affixed; but the three directors did not appear on the face of the cheque to be directors, or to sign as such, it was held that it did not purport to be the cheque of the company, and

was not binding on it : (*Serrell v. Derbyshire and Worcester Railway* 8 & 9 VICT. c. 16. Co., 19 L. J. (C. P.) 371 ; 9 C. B. 811.)

XCVIII. The directors shall cause notes, minutes, or copies, as the case may require, of all appointments made or contracts entered into by the directors, and of the orders and proceedings of all meetings of the company, and of the directors and committees of directors, to be duly entered in books to be from time to time provided for the purpose, which shall be kept under the superintendence of the directors ; and every such entry shall be signed by the chairman of such meeting ; and such entry so signed shall be received as evidence in all courts, and before all judges, justices, and others, without proof of such respective meetings having been duly convened or held, or of the persons making or entering such orders or proceedings being shareholders or directors or members of committee respectively, or of the signature of the chairman, or of the fact of his having been chairman, all of which last-mentioned matters shall be presumed, until the contrary be proved.

Proceedings to be entered in a book, and to be evidence (a).

(a) It is the duty of a public corporate body to keep a record of their proceedings, and therefore, where circumstances transpired after a decree had been made, which might have influenced the decree, but were not able to be brought forward, because they were not entered in the company's books, which were in evidence, the Lord Chancellor thought he might use his discretion to allow a supplemental bill, in the nature of a bill of review, putting these circumstances in issue, to be filed : (*Sheffield Canal Co. v. Sheffield and Rotherham Railway Co.*, 3 R. C. 486.)

Course where all proceedings not entered in books produced in a suit : supplemental bill.

It would seem that no objection can be made on the ground that the minutes, signed by the chairman at a subsequent meeting, have been made up from rough notes taken at a previous meeting : (*Re Jennings*, 1 Ir. Ch. Rep. 236 ; and see *West London Railway Co. v. Bernard*, 3 R. C. 649 ; 3 Q. B. 873 ; 8 Jur. 144.)

Minutes may be made up from notes taken at a meeting.

Where an act prescribed that the orders and proceedings of all meetings of a railway company "shall be entered in some book or books, to be provided and kept for that purpose, and shall be signed by the chairman of such respective meetings," it was held that the signature of the resolution of the former meeting, with the addition of the words, "confirmed, 24th August," by the chairman of the following meeting, he having presided at the former meeting, was sufficient : (*West London Railway Co. v. Bernard*, 3 R. C. 649 ; 8 Jur. 144 ; 3 Q. B. 873 ; *London and Brighton Railway Co. v. Fairclough*, 2 M. & G. 686 ; *Southampton Dock Co. v. Richards*, 1 M. & G. 448 ; and see *Miles v. Bough*, 12 L. J. (Q. B.) 74 ; 7 Jur. 51 ; 3 Q. B. 845 ; 3 R. C. 668.)

Confirmation of minutes.

XCIX. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as

Informalities in appointment of directors not to invalidate proceedings.

8 & 9 VICT. c. 16. a director, shall notwithstanding it may be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were or was disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director (a).

De facto board of directors. (a) It had been decided, before the passing of the Companies Clauses Act, that a board of directors *de facto* must be looked upon as exercising their functions *de jure* until their qualification to act as directors has been brought before a general meeting of their company: (*Foss v. Harbottle*, 2 Hare, 461.)

Signature by them of conveyances. And thus the signature of a conveyance by insolvent directors was held valid, since they executed it as directors, and no step had been taken to dispute their authority: (*Ibid.*)

Invalidity of their appointment. It was also observed in another case that the Court would not entertain a bill, on the ground of the invalidity of the title of the corporate officers: (*Mosley v. Alston*, 1 Ph. 790; 4 R. C. 636; 16 L. J. (Ch.) 216; *Inderwick v. Snell*, 2 M'N. & G. 216; 2 H. & T. 412; 19 L. J. (Ch.) 542; *Hattersley v. Lord Shelburne*, 31 L. J. (Ch.) 873; 10 W. R. 881. And see further the notes to s. 83, *ante*, p. 68.)

Ratification by shareholders of acts of directors. It was laid down in the House of Lords, in the case of *Davidson v. Tulloch*, 6 Jur. N. S. 543, that an action may be maintained against the directors of a company in respect of any transaction which the body of shareholders could not sanction; but in respect of any transaction which they could sanction, although the directors may not have been justified in what they were doing, there can be no right of action.

Directors not to be personally liable. C. No director, by being party to or executing in his capacity of director any contract or other instrument on behalf of the company, or otherwise lawfully executing any of the powers given to the directors, shall be subject to be sued or prosecuted, either individually or collectively, by any person whomsoever; and the bodies or goods or lands of the directors shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, signed, or executed by them, or by reason of any other lawful act done by them in the execution of any of their powers as directors; and the directors, their heirs, executors, and administrators, shall be indemnified out of the capital of the company for all payments made or liability incurred in respect of any acts done by them, and for all losses, costs, and damages which they may incur in the execution of the powers granted to them; and the directors for the time being of the company may apply the existing funds and capital of the company for the purposes of such

Indemnity of directors.

indemnity, and may, if necessary for that purpose, make ^{8 & 9 Vict. c. 16.} calls of the capital remaining unpaid, if any.

AUDITORS.

And with respect to the appointment and duties of auditors, be it enacted as follows:

Auditors.

CI. Except where by the special act auditors shall be directed to be appointed otherwise than by the company, the company shall, at the first ordinary meeting after the passing of the special act, elect the prescribed number of auditors, and if no number is prescribed two auditors, in like manner as is provided for the election of directors; and at the first ordinary meeting of the company in each year thereafter the company shall in like manner elect an auditor to supply the place of the auditor then retiring from office, according to the provision hereinafter contained; and every auditor elected as hereinbefore provided, being neither removed nor disqualified, nor having resigned, shall continue to be an auditor until another be elected in his stead.

Election of auditors.

CII. Where no other qualification shall be prescribed by the special act, every auditor shall have at least one share in the undertaking; and he shall not hold any office in the company, nor be in any other manner interested in its concerns, except as a shareholder.

Qualification of auditors.

CIII. One of such auditors (to be determined in the first instance by ballot between themselves, unless they shall otherwise agree, and afterwards by seniority) shall go out of office at the first ordinary meeting in each year; but the auditor so going out shall be immediately re-eligible, and after any such re-election shall, with respect to the going out of office by rotation, be deemed a new auditor.

Rotation of auditors.

CIV. If any vacancy take place among the auditors in the course of the current year, then at any general meeting of the company the vacancy may, if the company think fit, be supplied by election of the shareholders.

Vacancies in office of auditor.

CV. The provision of this act respecting the failure of an ordinary meeting at which directors ought to be chosen shall apply, *mutatis mutandis*, to any ordinary meeting at which an auditor ought to be appointed.

Failure of meeting to elect auditor.

8 & 9 VICT. c. 16. **CVI.** The directors shall deliver to such auditors the half-yearly or other periodical accounts and balance sheet (a), fourteen days at the least before the ensuing ordinary meeting at which the same are required to be produced to the shareholders as hereinafter provided.

Delivery of balance sheet, &c., by directors to auditors. (a) As to the form of the accounts and balance sheet, see the Regulation of Railways Act, 1868, ss. 3-5, *post*.

Form of accounts and balance sheet. **CVII.** It shall be the duty of such auditors to receive from the directors the half-yearly or other periodical accounts and balance sheet required to be presented to the shareholders, and to examine the same.

Duty of auditors. **CVIII.** It shall be lawful for the auditors to employ such accountants and other persons as they may think proper, at the expense of the company, and they shall either make a special report on the said accounts, or simply confirm the same; and such report or confirmation shall be read, together with the report of the directors, at the ordinary meeting.

Powers of auditors.

ACCOUNTABILITY OF OFFICERS.

Accountability of officers. And with respect to the accountability of the officers of the company, be it enacted as follows:

CIX. Before any person intrusted with the custody or control of moneys, whether treasurer, collector, or other officer of the company, shall enter upon his office, the directors shall take sufficient security from him for the faithful execution of his office (a).

Security to be taken from officers intrusted with money.

(a) Where a clerk had entered into a bond as security for moneys to be received by him, given to a railway company which afterwards was amalgamated with another, it was held that the consolidation of the two companies did not affect the responsibility of the surety, notwithstanding that the new company possessed additional lines; and a plea that the bond was made before the consolidation, and that by the consolidation the original company was dissolved, was held bad in action, brought on the bond: (*London, Brighton, and S. C. Railway Co. v. Goodwin*, 3 Exch. 320; 6 R. C. 177. And see also a similar case, *Eastern Union Railway Co. v. Cochrane*, 9 Exch. 197.)

Where company dissolved by amalgamation with another company.

CX. Every officer employed by the company shall from time to time, when required by the directors, make out and

Officers to account on demand.

deliver to them, or to any person appointed by them for 8 & 9 Vict. c. 16. that purpose, a true and perfect account in writing, under his hand of all moneys received by him on behalf of the company; and such account shall state how, and to whom, and for what purpose such moneys shall have been disposed of; and, together with such account, such officer shall deliver the vouchers and receipts for such payments; and every such officer shall pay to the directors, or to any person appointed by them to receive the same, all moneys which shall appear to be owing from him upon the balance of such accounts.

CXI. If any such officer fail to render such account, or to produce and deliver up all the vouchers and receipts relating to the same in his possession or power, or to pay the balance thereof when thereunto required, or if for three days after being thereunto required he fail to deliver up to the directors, or to any person appointed by them to receive the same, all papers and writings, property, effects, matters, and things, in his possession or power, relating to the execution of this or the special act, or any act incorporated therewith, or belonging to the company, then, on complaint thereof being made to a justice, such justice shall summon such officer to appear before two or more justices at a time and place to be set forth in such summons, to answer such charge; and upon the appearance of such officer, or in his absence upon proof that such summons was personally served upon him, or left at his last known place of abode, such justices may hear and determine the matter in a summary way, and may adjust and declare the balance owing by such officer; and if it appear, either upon confession of such officer or upon evidence, or upon inspection of the account, that any moneys of the company are in the hands of such officer, or owing by him to the company, such justices may order such officer to pay the same; and if he fail to pay the amount, it shall be lawful for such justices to grant a warrant to levy the same by distress, or, in default thereof, to commit the offender to gaol, there to remain without bail for a period not exceeding three months, unless the same be sooner paid.

CXII. If any such officer refuse to make out such account in writing, or to produce and deliver to the justices Officers refusing to deliver up documents, &c., to be imprisoned.

8 & 9 VICT. c. 16, the several vouchers and receipts relating thereto, or to deliver up any books, papers, or writings, property, effects, matters, or things, in his possession or power, belonging to the company, such justices may lawfully commit such offender to gaol, there to remain until he shall have delivered up all the vouchers and receipts, if any, in his possession or power, relating to such accounts, and have delivered up all books, papers, writings, property, effects, matters, and things, if any, in his possession or power, belonging to the company.

Where officer about to abscond, a warrant may be issued in the first instance.

CXIII. Provided always, That if any director or other person acting on behalf of the company shall make oath that he has good reason to believe, upon grounds to be stated in his deposition, and does believe, that it is the intention of any such officer as aforesaid to abscond, it shall be lawful for the justice before whom the complaint is made, instead of issuing his summons, to issue his warrant for the bringing such officer before such two justices as aforesaid; but no person executing such warrant shall keep such officer in custody longer than twenty-four hours without bringing him before some justice; and it shall be lawful for the justice before whom such officer may be brought either to discharge such officer, if he think there is no sufficient ground for his detention, or to order such officer to be detained in custody, so as to be brought before two justices, at a time and place to be named in such order, unless such officer give bail to the satisfaction of such justice for his appearance before such justices to answer the complaint of the company.

Sureties not to be discharged.

CXIV. No such proceeding against or dealing with any such officer as aforesaid shall deprive the company of any remedy which they might otherwise have against such officer, or any surety of such officer.

ACCOUNTS.

Accounts.

And with respect to the keeping of accounts, and the right of inspection thereof by the shareholders, be it enacted as follows:—

Accounts to be kept.

CXV. The directors shall cause full and true account to be kept of all sums of money received or expended o

account of the company by the directors and all persons employed by or under them, and of the matters and things for which such sums of money shall have been received or disbursed and paid (a).

(a) By the Regulation of Railways Act, 1868, (31 & 32 Vict. c. 119,) s. 3, it is enacted that every incorporated company, seven days at least before each ordinary half-yearly meeting held after the 31st of December 1868, shall prepare and print, according to the forms contained in the first schedule to the act, a statement of accounts and balance-sheet for the last preceding half-year, and the other statements and certificates required by the same schedule, and an estimate of the proposed expenditure out of capital for the next ensuing half-year, and such statement of accounts and balance-sheet shall be the statement of accounts and balance-sheet which are submitted to the auditors of the company. The same section provides a penalty of £5 for every day's default in complying with its provisions.

Uniform accounts according to schedule forms in regulation of Railways Act, 1868.

The Board of Trade, with the consent of a company, may alter the forms of accounting as regards such company for the purpose of adapting them to the circumstances of such company, or of better carrying into effect the objects of the section.

Alteration of form by Board of Trade.

By s. 4, the statement of accounts, balance-sheet, and estimate of expenditure, prepared as required by the act, are to be signed by the chairman or deputy chairman, and by the accountant or other officer in charge of the accounts of the company, and shall be preserved at the company's principal office. A printed copy is to be forwarded to the Board of Trade, and at all times after the date at which it is required to be printed be given, on application, to every person who holds any ordinary or preference share or stock in the company, or any mortgage, debenture, or debenture stock of the company; and every such person may at all reasonable times, without fee or charge, peruse the original in the possession of the company. Any company which acts in contravention of this section shall be liable for each offence to a penalty not exceeding £50.

Signature and printing of accounts.

By s. 5, if any statement, balance-sheet, or report which is required by the act is false in any particular to the knowledge of any person who signs the same, such person shall be liable on conviction thereof, or indictment, to fine and imprisonment, or on summary conviction thereof to a penalty not exceeding £50. (See the act, *post*.)

Falsification of accounts, reports, &c., a misdemeanour.

By the Railway Companies Securities Act, 1866, (29 & 30 Vict. c. 108,) every railway company is bound to keep registered at the office of the Registrar of Joint-Stock Companies, the name of their secretary, accountant, treasurer, or chief cashier, for the time being authorised by them to sign instruments under that act; within fourteen days of the half-yearly days appointed by the act, every railway company is to make an account according to the schedule to the act, of their loan capital authorised to be raised, and actually raised, up to the end of each half-year; the account is to be open for perusal by any holder of shares, stock, mortgages, bonds, or debentures, or by any person interested in such securities; a copy of the account certified by the register officer is, within twenty-one days of the half-yearly day, to be deposited with the Registrar

Railway Companies Securities Act, 1866, s. 3. Registered officer.

Half-yearly loan capital accounts, s. 5.

To be open for perusal by shareholders, &c., s. 7. To be deposited with registrar of joint-stock companies, s. 8.

8 & 9 VICT. c. 16.

No money to be borrowed before registration of act giving borrowing power, s. 10.

Penalty, s. 11. Power to inspect documents on payment of fee, s. 12.

Declaration to be endorsed on mortgage deed, bond, &c., that money thereby raised not in excess of borrowing powers, s. 14.

Ss. 15-17.

Liability of company not affected by non-compliance with act.

Books to be balanced.

Inspection of accounts by shareholders at stated times.

Inspection by a person sued for calls.

of Joint-Stock Companies ; no money is to be borrowed on mortgage, bond, or debenture, unless they first deposit with the Registrar of Joint-Stock Companies a statement according to Part II. of Schedule I. of the act specifying the act of Parliament conferring the borrowing power, the amount thereby authorised to be borrowed, &c. ; a penalty is to be inflicted for default in this particular ; the documents deposited with the Registrar of Joint-Stock Companies are to be kept open for perusal by any one upon payment of one shilling ; a declaration, (in the form given in Schedule II.,) signed by two directors and by the registered officer, is to be endorsed in every mortgage deed, bond, or debenture, that the money raised thereby is not in excess of the amount there stated as remained to be borrowed ; certain penalties are provided in case of default ; the liability of the company is not to be affected by anything in the act. (See the act, *post*.)

CXVI. The books of the company shall be balanced at the prescribed periods, and, if no periods be prescribed, fourteen days at least before each ordinary meeting ; and forthwith on the books being so balanced an exact balance sheet shall be made up, which shall exhibit a true statement of the capital stock, credits, and property of every description belonging to the company, and the debts due by the company, at the date of making such balance sheet, and a distinct view of the profit or loss which shall have arisen on the transactions of the company in the course of the preceding half year ; and previously to each ordinary meeting such balance sheet shall be examined by the directors, or any three of their number, and shall be signed by the chairman or deputy chairman of the directors.

CXVII. The books so balanced, together with such balance sheet as aforesaid, shall for the prescribed periods, and if no periods be prescribed for fourteen days previous to each ordinary meeting, and for one month thereafter, be open for the inspection of the shareholders at the principal office or place of business of the company ; but the shareholders shall not be entitled at any time, except during the periods aforesaid, to demand the inspection of such books, unless in virtue of a written order signed by three of the directors.

Where a defendant in an action for calls applied for leave to inspect the minute-books of the company, and of the directors' meetings, " particularly with regard to the calls sued on," for the purpose of gaining his plea, such inspection was refused : (*Birmingham, Bristol, and Thames Railway Co. v. White*, 1 Q. B. 282 ; 3 R. C. 863.)

As to inspection by a bond creditor, see *Pontet v. Basingstoke Canal Co.*, 2 Bing. N. C. 370.

It seems that a person who has obtained the usual order of Court 8 & 9 VICT. c. 16. for the purpose of inspection of documents may take a professional accountant to assist him : (*Bonnardet v. Taylor*, 1 J. & H. 383 ;) but not a person who being a professional accountant, is likewise the auditor of a rival company : (*Draper v. Manchester, Sheffield, and Lincolnshire Railway Co.*, 3 De G. F. & J. 23 ; 9 W.R. 215 ;) nor unless the accounts are of a complicated character : (*Swansea Vale Railway Co. v. Rudd*, L. R. 2 Eq. 274.)

For forms of orders for inspection and production of documents, see Seton on Decrees, 1040, *et seq.*

By a bond creditor.
Professional accountant may be employed to inspect.
But not if he is accountant of rival company.
Forms of orders for inspection.

CXVIII. The directors shall produce to the shareholders assembled at such ordinary meeting the said balance sheet, applicable to the period immediately preceding such meeting, together with the report of the auditors thereon, as hereinbefore provided.

Balance sheet to be produced at the meeting.

CXIX. The directors shall appoint a book-keeper to enter the accounts aforesaid in books to be provided for the purpose; and every such book-keeper shall permit any shareholder to inspect such books, and to take copies or extracts therefrom, at any reasonable time during the prescribed periods, and if no periods be prescribed during one fortnight before and one month after every ordinary meeting; and if he fail to permit any such shareholder to inspect such books, or take copies or extracts therefrom, during the periods aforesaid, he shall forfeit to such shareholder for every such offence a sum not exceeding five pounds.

Book-keeper to allow inspection of the accounts at the appointed times.

DIVIDENDS.

And with respect to the making of dividends, be it enacted as follows:

Dividends.

CXX. Previously to every ordinary meeting at which a dividend is intended to be declared the directors shall cause a scheme to be prepared, showing the profits, if any, of the company for the period current since the preceding ordinary meeting at which a dividend was declared, and apportioning the same, or so much thereof as they may consider applicable to the purposes of dividend, among the shareholders, according to the shares held by them respectively, the amount paid thereon, and the periods during which the same may have been paid, and shall exhibit such scheme at such ordinary meeting, and at such meeting a dividend may be declared according to such scheme.

Previously to declaration of dividends a scheme to be prepared.

- 8 & 9 VICT. c. 16. By the Railway Companies Act, 1867, s. 30, (30 & 31 Vict. c. 127,) it is enacted that "no dividend shall be declared by a company, until the auditors have certified that the half-yearly accounts proposed to be issued contains a full and true statement of the financial condition of the company, and that the dividend proposed to be declared on any shares is *bonâ fide* due therein, after charging the revenue of the half-year with all expenses which ought to be paid thereout in the judgment of the auditors.
- Railway Companies Act, 1867, 30 & 31 Vict. c. 127, s. 30. No dividend to be declared until auditors certify accuracy of accounts. And that proper charges to revenue have been made. Judgment of auditors to be final, and differences to be submitted to general meeting.
- Auditors may call for further accounts. And may annex a statement and opinion as to financial condition of company.
- Court of Chancery will not interfere in declaration of dividend except in case of fraud.
- So no injunction against dividend because line not completed.
- Except where special act provides against dividend until completion.
- Dividends may not be paid out of capital. (See next section.)
- Each shareholder is entitled to his proper dividend.
- If the directors differ from the auditors with respect to the payment of any such expenses out of the revenue of the half-year, such difference shall, if the directors desire it, be stated in the report to the shareholders, and the company in general meeting may decide thereon, subject to all the provisions of the law then existing, and such decision shall for the purposes of the dividend be final and binding; but if no such difference is stated, or if no decision is given on any such difference, the judgment of the auditors shall be final and binding.
- And the auditors may call for further accounts and documents, and refuse to certify until they have received the same.
- And the auditors may at any time add to their certificate, or issue to the shareholders independently at the cost of the company, any statement respecting the financial condition and prospects of the company, which they think may be for the information of the shareholders. (See the act, *post*.)
- The declaration of a dividend is one of those matters of internal arrangement which do not fall within the jurisdiction of a court of equity, but must be regulated by a general meeting, unless a clearly illegal proceeding is threatened: (*Browne v. Monmouthshire Railway and Canal Co.*, 13 Bea. 32; 7 R. C. 682; 20 L. J. (Ch.) 497; *Stevens v. South Devon Railway Co.*, 9 Hare, 326; 7 R. C. 629.)
- Thus where the Railway Act has specified a time within which the line is to be completed, the non-completion of the line will not be a reason for granting an injunction to restrain the declaration of a dividend: (*Ibid*.)
- But if a special act provides that no dividend shall be declared until the completion of the line, such a provision is obligatory, and not merely directory, and the Court will restrain the future declaration of dividends, though it will not restrain the payment of those actually declared before the filing of the bill: (*Carlisle v. South-Eastern Railway Co.*, 6 R. C. 670; 2 H. & T. 366; 19 L. J. (Ch.) 477; and see *Fawcett v. Laurie*, 1 Dr. & Sm. 192; 3 L. T. N. S. 50.)
- And the Court will not allow any dividend to be declared, whereby in any way the capital of the company may be affected: (see *McDougall v. Jersey Imperial Hotel Co.*, 2 H. & M. 528; 34 L. J. (Ch.) 28; *Bloxam v. Metropolitan Railway Co.*, 3 W. N. 37, 53; 1 L. R. 3 (Ch.) 337; and the enactment on this point in s. 121, *post*, p. 112.)
- A declaration of a dividend to be paid in preference stock is *ultra vires*: (*Hoole v. Great Western Railway Co.*, 2 W. N. 266, 273, 303.)
- And so, whilst no shareholder will be permitted to partake in a dividend illegally declared, no shareholder may be excluded from his share in the profits: (See Lindley on Partnership, p. 729; *Adley v. Whitstable Co.*, 17 Ves. 315; 19 Ves. 304; 1 Mer. 107.)

A variation by an act of Parliament, altering the rate of interest s 8 & 9 VICT. c. 16. on shares, has been held not to deprive shareholders of their right to arrears of dividends due at the time of the passing of the Amending Act: (*Coates v. Nottingham Waterworks Co.*, 30 Bea. 86.)

And an act declaring that when the profits of a gas company exceeded 10 per cent., some shareholders being entitled to only 7 per cent., the Attorney-General might interpose and require the surplus profits to be applied in payment of back dividends, and then in the reduction of the gas-rate, it was held that this did not render the rate of dividend proportionate to the maximum rate of dividend: (*Maughan v. Leamington Priors Gas Co.*, 15 L. T. N. S. 437; 1 W. N. 390.)

Arrears of dividend not affected by alteration in rate by subsequent special act.

The interest of a shareholder in his dividend when declared is individual, and a bill in the form of a plaintiff suing on behalf of himself and all other shareholders, is not sufficient to represent all such shareholders: (*Carlisle v. South-Eastern Railway Co.*, 6 R. C. 670; 2 H. & T. 366; 19 L. J. (Ch.) 477; and see as to this form of suit, *ante*, pp. 75-79.)

Individual right to dividend when declared; form of suit.

Dividends under the Companies Clauses Act, 1845, are not within the Apportionment Act, (4 & 5 W. IV. c. 22): (*Re Maxwell*, 1 H. & M. 610; 32 L. J. (Ch.) 333; 11 W. R. 480.)

Dividends not within Apportionment Act.

PREFERENCE SHARES OR STOCK.

By the Companies Clauses Act, 1863, (26 & 27 Vict. c. 118,) Part II. s. 13, where any company is authorised by a special act thereafter to be passed, and incorporating that part of the act to raise any additional sum or sums by the issue of new preference shares, or by the issue of new preference stock, or (at the option of the company) by either of those modes, then and in every such case the company with the like sanction as aforesaid, may for the purpose of raising such additional sum or sums from time to time create and issue (according as the authority of the special act extends to shares only, or to stock only, or to both) such new shares or new stock, either ordinary or preference, and either of one class and with like privileges, and of the same or different amounts, and respectively with any fixed, fluctuating, contingent, preferential, perpetual, terminable, deferred or other dividend or interest not exceeding the rate prescribed in the special act, and if no rate is prescribed then not exceeding the rate of five pounds per centum per annum, and subject, as to any such new shares, to the payment of calls of such amounts and at such times as the company from time to time thinks fit.

Companies Clauses Act, 1863, 26 & 27 Vict. c. 118, s. 13, Part II. Authority to companies to issue preference shares or stock.

Provided always, that any preference assigned to any shares or stock so issued under the special act shall not affect any guarantee, or any preference or priority in the payment of dividend or interest, or any shares or stock, that may have been granted by the company under or confirmed by any previous act, or that may be otherwise lawful subsisting.

Not to affect previous guarantees or preferences.

By s. 14, it is enacted that the preference shares or preference stock so issued, shall be entitled to the preferential dividend or interest assigned thereto, out of the profits of each year, in priority to the ordinary shares and ordinary stock of the company; but if in

s. 14. Deficiency in dividend in any year not to be made up in subsequent years.

8 & 9 Vict. c. 16. any year ending on the day prescribed in the special act, and if no day is prescribed, then on the 31st day of December, there are not profits available for the payment of the full amount of preferential dividend or interest for that year, no part of the deficiency shall be made good out of the profits of any subsequent year, or out of any other funds of the company.

Certificates of shares to state conditions of issue.

Power to issue preference stock in pursuance of resolutions.

And s. 15 provides that the terms and conditions on which any preference share or stock is subject shall be clearly stated on the certificate of that preference share or portion of preference stock. (See the act, *post*.)

Railway companies may therefore, according to the provisions of this act, provided the part recited above be incorporated in some special act, create preference shares and stock in the same way as they are authorised to raise funds by other means by virtue of their act, and the question mooted in several cases as to their power by special resolution to issue shares or stock with a preferential dividend has lost much of its importance. It may, however, be useful to state, that doubt was felt on this point by Sir G. J. Turner, L. J., in *Sturge v. Eastern Union Railway Co.*, 7 De G. M. & G. 158, 175. In another case also Sir J. L. Knight Bruce, V.-C., gave no opinion upon the question, but refused to grant an interlocutory injunction, on the ground that the balance of inconvenience to the company from such a course would be greater than the possible advantage to the plaintiff: (*Fielden v. Lancashire and Yorkshire Railway Co.*, 2 De G. & Sm. 531.)

Confirmation of power by subsequent recognition by act of Parliament.

But where a subsequent act by a recital recognised the existence of a preference capital in granting powers for a further issue, that was held to be a confirmation which made it unnecessary to decide upon the validity of the resolutions originally creating such preference: (*Crawford v. North Eastern Railway Co.*, 3 K. & J. 723.)

With respect to the rights of preference shareholders:—

Preference shareholder may restrain illegal declarations of dividends.

A preference shareholder is entitled to file a bill to prevent the company from declaring a dividend at variance with the terms on which he took his shares, and that without waiting until there are funds wherewith a dividend could be declared: (*Sturge v. Eastern Union Railway Co.*, 7 De G. M. & G. 158; *Mattheus v. Great Northern Railway Co.*, 28 L. J. (Ch.) 375, where see form of decree on such a bill, p. 383.)

Form of decree.

Costs.

Upon the successful issue of such a bill, a shareholder is entitled to the costs as between party and party only: (*Morgan v. Great Eastern Railway Co.* (2) 1 H. & M. 560.)

Preference shareholders have charge on profits.

A statute authorising the issue of preference shares, in fact guarantees to the holder of them a charge on all accruing profits at a stipulated rate, before anything is divided among the ordinary shareholders. This is substantially interest chargeable on profits: (*Henry v. Great Northern Railway Co.*, 1 De G. & J. 606; 27 L. J. (Ch.) 1; 1 K. & J. 1.) And Sir W. P. Wood, V.-C., has declared that preference shareholders have a charge on profits, accruing not *de anno in annum*, though limited to the profits of the railway: (*Mattheus v. Great Northern Railway Co.*, 28 L. J. (Ch.) 375.)

Not accruing *de anno in annum*.

No personal guarantee, nor any from corporate funds.

There is no personal guarantee from any individual shareholder, nor any from the general funds of the company: (*Ibid.*)

Deductions from revenue before

The deductions from revenue properly made before any dividend can be declared are, in the first place, sums expended in the ordinary

working of the railway, e.g., engines, rolling-stock, repairs, completing stations, and probably wages, and then the funded debt of the company will be provided for. (See *Corry v. Londonderry and Enniskillen Railway Co.*, 29 Bea. 263; 30 L. J. (Ch.) 290.)*

Under s. 122, also, (*post*, p. 112,) the directors are empowered to set apart a fund for meeting "contingencies, or for enlarging, repairing, or improving the works connected with the undertaking."

It will be seen the preference shareholders holding shares created under Part II. of the Companies Clauses Act, 1845, are not entitled, as appears from s. 14, to receive arrears of unpaid dividends; but it had previously been held, and so far as concerns preference shares or stock created before that act may still be held, that arrears of dividends are payable, as soon as profits enough have been realised, and that before ordinary shareholders receive at such time any dividend in respect of their shares: (*Sturge v. Eastern Union Railway Co.*, 7 De G. M. & G. 158; *Henry v. Great Northern Railway Co.*, 1 De G. & J. 606; 27 L. J. (Ch.) 1; 4 K. & J. 1; *Matthews v. Great Northern Railway Co.*, 28 L. J. (Ch.) 375; *Crawford v. North-Eastern Railway Co.*, 3 K. & J. 723; *Corry v. Londonderry and Enniskillen Railway Co.*, 29 Bea. 263; 30 L. J. (Ch.) 290.)

It was considered that if such allowance of arrears were directed by the Court, it would prevent the possibility of directors setting apart too large a sum for contingencies under s. 122, so as to defeat the perception of dividends in any year by the preference shareholders: (*Henry v. Great Northern Railway Co.*, 1 De G. & J. 606; 27 L. J. (Ch.) 1; 4 K. & J. 1.)

In a case where a provision had been made on the issue of some preference shares that arrears should be paid out of subsequent income, but no such provision was made with respect to others, it was held that all alike were entitled to such payment: (*Corry v. Londonderry and Enniskillen Railway Co.*, 29 Bea. 263; 30 L. J. (Ch.) 290.)

Where an act enabled shareholders to split their shares into half shares, one-half to be paid up, with a "guaranteed" dividend of six per cent., and the other half not paid up, with a dividend never to exceed the dividend for the time being paid on the "guaranteed" shares, all such holders of guaranteed shares as had not acquiesced in the payment of dividends to the holders of the other class, were held entitled to receive arrears of dividends out of the subsequent profits of the company: (*Matthews v. Great Northern Railway Co.*, 28 L. J. (Ch.) 375.)

In speaking of shares, the words "interest" and "dividends," as used in the special acts, are synonymous: (*Crawford v. North-Eastern Railway Co.*, 3 K. & J. 723.)

As to schemes of arrangement under the Railway Companies Act, 1867, see *post*.

CXXI. The company shall not make any dividend whereby their capital stock will be in any degree reduced (a): Provided always, that the word "dividend"

s & 9 Vict. c. 16.
dividends can be declared.
Right to have arrears of dividends paid out of profits of subsequent years.

Effect of provisions allowing arrears to be subsequently made up.

Acquiescence.

"Interest" and "dividends" synonymous in special acts.
Schemes of arrangement.

Dividend not to be made so as to reduce capital.

* A reference to the schedule forms of accounts annexed to the Regulation of Railways Act, 1868, (*post*), will show clearly what are the several items properly to be charged to revenue and to capital.

8 & 9 VICT. c. 16. shall not be construed to apply to a return of any portion of the capital stock, with the consent of all the mortgagees and bond creditors of the company, due notice being given for that purpose at an extraordinary meeting to be convened for that object.

(a) (See *MDougall v. Jersey Imperial Hotel Co.*, 2 H. & M. 528; 34 L. J. (Ch.) 28.)

It was held in a late case that the payment of a dividend in preference stock, was in fact a payment out of capital, and therefore *ultra vires*: (*Hoole v. Great Western Railway Co.*, 2 W. N. 266, 273, affirmed on appeal, 303; L. R. 3 Ch. 262.)

And in another case, where it appeared that a fund applicable to the construction of an extension line was intended to be employed for the payment of a dividend, and also that directors' and auditors' fees and office expenses had been paid out of capital, the Court granted an interlocutory injunction to empower the payment of such a dividend: (*Bloxam v. Metropolitan Railway Co.*, 3 W. N. 37, 53.)

The dividend, the payment of which was restrained, was at the rate of 7 per cent., and the Vice-Chancellor refused a motion to commit the chairman of the company, the board having after the injunction declared a dividend of 5½ per cent.

But on appeal to Lord Chelmsford, L. C., it was held that whether the charges above referred to were rightly charged to capital or not, no injunction could be granted on that ground, as the balance carried over to the next half-year exceeded the amount so charged; but his Lordship continued the injunction on the ground that the questions raised were of great doubt and importance, (especially as to whether interest on debentures issued for lines in construction could be charged to capital,) and warranted the suspension of the judgment of the Court until the hearing: (L. R. 3 Ch. App. 337.)

Power to directors to set apart a fund for contingencies.

CXXII. Before apportioning the profits to be divided among the shareholders the directors may, if they think fit, set aside thereout such sum as they may think proper to meet contingencies, or for enlarging, repairing, or improving the works connected with the undertaking, or any part thereof, and may divide the balance only among the shareholders.

Dividend not to be paid unless all calls paid.

CXXIII. No dividend shall be paid in respect of any share until all calls then due in respect of that and every other share held by the person to whom such dividend may be payable shall have been paid.

BYE-LAWS.

Bye-laws.

And with respect to the making of bye-laws, be it enacted as follows:

Power to make bye-laws for the officers of the company (a).

CXXIV. It shall be lawful for the company from time to time to make such bye-laws as they think fit, for the pur-

pose of regulating the conduct of the officers and servants of the company, and for providing for the due management of the affairs of the company in all respects whatsoever, and from time to time to alter or repeal any such bye-laws, and make others, provided such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special act; and such bye-laws shall be reduced into writing, and shall have affixed thereto the common seal of the company; and a copy of such bye-laws shall be given to every officer and servant of the company affected thereby.*

(a) It was decided in an early case, that bye-laws will be invalid, if they derogate in any way from the established rights of the members of the company, and they must, therefore, be made strictly in accordance with the terms of power of making them: (*Adley v. Whistable Co.*, 17 Ves. 315; 19 Ves. 304; 1 Mer. 107.)

Bye-laws to be in strict accordance with power of making them.

It seems, however, that even in the absence of a special power to make bye-laws, any properly constituted company is entitled to make them, provided they do not attempt to authorise acts which would be *ultrâ vires* of the company: (*Child v. Hudson's Bay Co.*, 2 P. Wms. 207.)

Right to make bye-laws.

See further as to bye-laws, ss. 108-111 of the Railways Clauses Act, 1845, *post*.

CXXV. It shall be lawful for the company, by such bye-laws, to impose such reasonable penalties upon all persons, being officers or servants of the company, offending against such bye-laws, as the company think fit, not exceeding five pounds for any one offence.

Fines for breach of such bye-laws.

CXXVI. All the bye-laws to be made by the company shall be so framed as to allow the justice before whom any penalty imposed thereby may be sought to be recovered to order a part only of such penalty to be paid, if such justice shall think fit.

Bye-laws to be so framed as that penalties may be mitigated.

CXXVII. The production of a written or printed copy of the bye-laws of the company, having the common seal of the company affixed thereto, shall be sufficient evidence of such bye-laws in all cases of prosecution under the same.

Evidence of bye-laws.

ARBITRATION.

And with respect to the settlement of disputes by arbitration, be it enacted as follows:

Arbitration.

CXXVIII. When any dispute authorised or directed

Appointment of arbitrator when questions are to be determined by arbitration.

* The bye-laws issued by the Board of Trade for regulating travelling and other matters will be found in the Appendix.

8 & 9 VICT. c. 16. by this or the special act, or any act incorporated therewith, to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall by writing under his hand nominate and appoint an arbitrator to whom such dispute shall be referred; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and in such case the award or determination of such single arbitrator shall be final.

Vacancy of
arbitrator to be
supplied.

CXXIX. If before the matters so referred shall be determined, any arbitrator appointed by either party die, or become incapable, or refuse, or for seven days neglect to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal, or disability as aforesaid.

Appointment of
umpire.

CXXX. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ; and if such umpire shall die, or refuse, or for seven days neglect to act, they shall forthwith after such death, refusal, or neglect appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

CXXXI. If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, it shall be lawful for the Board of Trade, if they think fit, in any case in which a railway company shall be one party to the arbitration, on the application of either party to such arbitration, to appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ shall be final.

(a) A special act directing disputes to be submitted to arbitration in the manner provided by the Companies Clauses Consolidation Act, 1845, does not, except in cases "in which a railway company shall be one party to the arbitration," authorise the appointment of an umpire by the Board of Trade, under s. 131: (*Re Lord*, 1 K. & J. 90; 24 L. J. (Ch.) 145.)

In such a case, as where a special act for settling the affairs of a mining company contained such a direction, but the matter in dispute was one of costs between the company and a person who had filed a bill against them, it was held by Sir W. P. Wood, V.-C., that the 12th section of the Common Law Procedure Act, 1854, 17 & 18 Vict. 125, would apply, and his Honour considered that section to have a retrospective operation: (*Re Lord*, 1 K. & J. 90; 24 L. J. (Ch.) 145.)

CXXXII. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

CXXXIII. Except where by this or the special act, or any act incorporated therewith, it shall be otherwise provided, the costs of and attending every such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators or their umpires, as the case may be.

CXXXIV. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

See as to arbitration in matters of compensation the Lands Clauses Act, 1845, ss. 25-27. And as to arbitration in cases where railway companies are mutually interested, see the Railways Arbitration Act, 1859, (22 & 23 Vict. c. 59,) in the Appendix.

NOTICES.

And with respect to the giving of notices, be it enacted as follows:

Notices.

*

8 & 9 Vict. c. 16.

Service of
notices upon
company (a).

CXXXV. Any summons or notice, or any writ, or other proceeding at law or in equity, requiring to be served upon the company, may be served by the same being left at or transmitted through the post directed to the principal office of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or in case there be no secretary then by being given to any one director of the company (b).

Constructive
notice of a
charge is not
sufficient.

(a) It has been held that where the secretary himself deposits the shares of the company to secure a debt, the fact of his being an officer of the company is not sufficient to enable the notice to the company to be dispensed with, and that in such a case this section does not apply: (*Ex parte Boulton*, 26 L. J. (Bankruptcy) 45.)

Mode of service
of notices is
directory.

(b) It was held in an early case that the mode provided by certain articles of serving notices on the clerk or secretary of the company was merely directory: (*Foss v. Harbottle*, 2 Hare, 461.)

This section ap-
plies to railway
companies.

It was sought to be questioned whether the provisions of this section applied to railway companies, and to the service of writs in actions of ejectment, and it was held that they did: (*Doe d. Bays v. Roe*, 16 M. & W. 98; *Doe d. Burgess v. Lowe*, 4 D. & L. 311;) and the Court granted a rule absolute for judgment against the casual ejector on an affidavit stating that notice had been served personally on the secretary without mentioning where; see as to service on secretary of a Scotch company, *Wilson v. Caledonian Railway*, 5 Exch. 822; 6 R. C. 772; and on the director of an Irish railway, *Eneas v. Dublin and Drogheda Railway Co.*, 14 M. & W. 142; 3 R. C. 760.

Service by com-
pany on share-
holders.

CXXXVI. Notices requiring to be served by the company upon the shareholders may, unless expressly required to be served personally, be served by the same being transmitted through the post directed according to the registered address or other known address of the shareholder, within such period as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the giving of such notice; and in proving such service it shall be sufficient to prove that such notice was properly directed, and that it was so put into the post-office.

Notices to joint-
proprietors of
shares.

CXXXVII. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons shall be named first in the register of shareholders; and notice so given shall be sufficient notice to all the proprietors of such share.

Notices by
advertisement.

CXXXVIII. All notices required by this or the spec

act, or any act incorporated therewith, to be given by advertisement, shall be advertised in the prescribed newspaper, or if no newspaper be prescribed, or if the prescribed newspaper cease to be published, in a newspaper circulating in the district within which the company's principal place of business shall be situated.

See notes to s. 22, *ante*, pp. 24, 25.

CXXXIX. Every summons, notice, or other such document requiring authentication by the company, may be signed by two directors, or by the treasurer or the secretary of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

Authentication
of notices.

CXL. And be it enacted, That if any person against whom the company shall have any claim or demand become bankrupt, or take the benefit of any act for the relief of insolvent debtors, it shall be lawful for the secretary or treasurer of the company, in all proceedings against the estate of such bankrupt or insolvent, or under any fiat, sequestration, or act of insolvency against such bankrupt or insolvent, to represent the company, and act in their behalf, in all respects as if such claim or demand had been the claim or demand of such secretary or treasurer, and not of the company.

Proof of debts in
bankruptcy.

CXLI. And be it enacted, That if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special act, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the Court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit; and thereupon such proceeding shall be had as in other cases where defendants are allowed to pay money into court.

Tender of
amends.

RECOVERY OF DAMAGES AND PENALTIES.

And with respect to the recovery of damages not specially provided for, and penalties, be it enacted as follows:

Recovery of
damages and
penalties.

8 & 9 VICT. c. 16.

Provision for
damages not
otherwise pro-
vided for.

CXLII. In all cases where any damages, costs, or expenses are by this or the special act, or any act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, on application, shall issue their or his warrant accordingly.

Distress against
the treasurer.

CXLIII. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, or expenses, payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company; and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same.

Method of pro-
ceeding before
justices in ques-
tions of damages,
&c.

CXLIV. Where in this or the special act, or any act incorporated therewith, any question of compensation, expenses, charges, or damages is referred to the determination of any one justice, or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to ex-

amine such parties or any of them, and their witnesses, on oath; and the costs of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof. 8 & 9 Vict. c. 10.

CXLV. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special act, or any act incorporated therewith, or by any bye-law of the company affecting other persons than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required. Publication of penalties.

CXLVI. If any person pull down or injure any board put up or affixed as required by this or the special act, or any act incorporated therewith, for the purpose of publishing any bye-law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board. Penalty for defacing boards used for such publication.

CXLVII. Every penalty or forfeiture imposed by this or the special act, or any act incorporated therewith, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices; and on complaint being made to any justice he shall issue a summons, requiring the party complained against to appear before two justices at a time and place to be named in such summons; and every such summons shall be served on the party offending, either in person or by leaving the same with some inmate at his usual place of abode; and upon the Penalties to be summarily recovered before two justices.

8 & 9 VICT. c. 16. appearance of the party complained against, or in his absence, after proof of the due service of such summons, it shall be lawful for two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them, and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit.

Penalties may be levied by distress.

CXLVIII. If forthwith upon any such adjudication as aforesaid, the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress; and such justices, or either of them, shall issue their or his warrant of distress accordingly.

Imprisonment in default of distress.

CXLIX. It shall be lawful for any such justice to order any offender so convicted as aforesaid to be detained and kept in safe custody until return can be conveniently made to the warrant of distress to be issued for levying such penalty or forfeiture, and costs, unless the offender give sufficient security, by way of recognisance or otherwise, to the satisfaction of the justice, for his appearance before him on the day appointed for such return, such day not being more than eight days from the time of taking such security; but if, before issuing such warrant of distress, it shall appear to the justice, by the admission of the offender or otherwise, that no sufficient distress can be had within the jurisdiction of such justice whereon to levy such penalty or forfeiture, and costs, he may, if he thinks fit, refrain from issuing such warrant of distress; and in such case, or if such warrant shall have been issued, and upon the return thereof such insufficiency as aforesaid shall be made to appear to the justice, then such justice shall, by warrant, cause such offender to be committed to gaol, there to remain without bail for any term not exceeding three months, unless such penalty or forfeiture, and costs, be sooner paid and satisfied.

Distress how to be levied.

CL. Where in this or the special act, or any act incor-

porated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

8 & 9 VICT. c. 16.

CLI. No distress levied by virtue of this or the special act, or any act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Distress not unlawful for want of form.

CLII. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, for the benefit of the poor of such parish; or if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied for the benefit of the poor of such extra-parochial place, or of any adjoining parish or district, and shall order the same to be paid over to the proper officer for that purpose.

Application of penalties.

CLIII. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special act, or any act incorporated therewith, for any offence made cognisable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.

Penalties to be sued for within six months.

CLIV. If, through any act, neglect, or default on account whereof any person shall have incurred any penalty

Damage to be made good in addition to penalty.

8 & 9 Vict. c. 16. imposed by this or the special act, or any act incorporated therewith, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage, as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and on non-payment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly.

Penalty on witnesses making default.

CLV. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction, under the provisions of this or the special act, or any act incorporated therewith, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath, or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

Transient offenders.

CLVI. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special act, or any act incorporated therewith, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient despatch, before some justice, without any warrant or other authority than this or the special act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

Form of conviction.

CLVII. The justices before whom any person shall be convicted of any offence against this or the special act, or any act incorporated therewith, may cause the conviction to be drawn up according to the form in the Schedule (G.) to this Act annexed.

Appeal from Justices—Access to Special Act. 123

CLVIII. No proceeding in pursuance of this or the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into any of the Superior Courts.

8 & 9 VICT. c. 16.
Proceedings not
to be quashed
for want of form.

CLIX. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special act, or any act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause or appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognisances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

Appeal.
Parties allowed
to appeal to
quarter sessions
on giving
security.

CLX. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Court to make
such order as
they think
reasonable.

ACCESS TO SPECIAL ACT.

And with respect to the provisions to be made for affording access to the special act by all parties interested, be it enacted as follows:

*Access to Special
Act.*

CLXI. The company shall at all times after the expiration of six months after the passing of the special act, keep in their principal office of business a copy of the

Copies of special
act to be kept
and deposited,
and allowed to
be inspected.

8 & 9 VICT. c. 16. special act, printed by the printers to Her Majesty, or some of them; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also, within the space of such six months, deposit in the office of each of the clerks of the peace of the several counties into which the work shall extend, and in the office of the town clerk of every burgh or city into which or within one mile of which the works shall extend, a copy of such special act so printed as aforesaid; and the said clerks of the peace and town clerks shall receive, and they and the company respectively shall retain, the said copies of the special act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner and upon the like terms and under the like penalty for default as is provided in the case of certain plans and sections, by an act passed in the first year of the reign of her present Majesty, intituled *An act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament.*

7 W. IV. & 1
Vict. c. 83.

Penalty on company failing to keep or deposit such copies.

Act not to extend to Scotland.

For recovering calls against shareholders residing in Scotland.

CLXII. If the company shall fail to keep or deposit as hereinbefore mentioned any of the said copies of the special act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

CLXIII. And be it enacted, That this act shall not extend to *Scotland*.*

CLXIV. Provided always, and be it enacted, That if any shareholder residing in *Scotland* shall fail to pay the amount of any call made upon him by the company in respect of any share held by him, it shall be lawful for the company to proceed against him in *Scotland*, and to sue for and recover the amount of such call, or to declare such share forfeited, in such manner as is by "The Companies Clauses Consolidation (*Scotland*) Act, 1845," in case the same shall pass into a law, provided in regard to shareholders of any company in *Scotland*.

* The Companies Clauses Consolidation (Scotland) Act, 1845, (8 & 9 Vict. c. 17,) differs generally only in respect of legal terminology from the English Act; and these differences have, where necessary, been duly noticed in their proper places, under corresponding sections of the latter Act.

CLXV. And be it enacted, That this act may be amended or repealed by any act to be passed in this session of Parliament.

S & 9 VICT. c. 16.
Act may be
amended, &c.

SCHEDULES referred to by the foregoing Act.

SCHEDULE (A.)

Form of Certificate of Share, (s. 11, ante, p. 9.)

Schedule (A.)

"The
Number Company."

THIS is to certify, That *A.B.* of is the proprietor
of the share number of "The Company,"
subject to the regulations of the said company. Given under the
common seal of the said company, the day of
in the year of our Lord

SCHEDULE (B.)

Form of Transfer of Shares or Stock, (under s. 14, ante, p. 12.) Schedule (B.)

I, [transferor] of in consideration of the sum of
paid to me by [transferee] of do
hereby transfer to the said [transferee] share [or shares], numbered
in the undertaking called "The Company,"
[or] pounds consolidated stock in the undertaking called
"The Company", standing [or part of the stock stand-
ing] in my name in the books of the company, to hold unto the
said [transferee], his executors, administrators, and assigns [or suc-
cessors and assigns], subject to the several conditions on which I
held the same at the time of the execution hereof; and I, the said
[transferee], do hereby agree to take the said share [or shares] [or
stock], subject to the same conditions. As witness our hands and
seals, the day of

[Insert the form of attestation usual in England,
if executed in England, and the testing clause
according to the form of the law of Scotland,
if executed in Scotland*.]

SCHEDULE (C.)

Form of Mortgage Deed, (under s. 41, ante, p. 44.)

Schedule (C.)

"The
Mortgage, number £ Company."

BY virtue of [here name the special act], we, "The
Company," in consideration of the sum of pounds paid
to us by *A.B.* of do assign unto the said *A.B.*, his
executors, administrators, and assigns, the said undertaking,† [and

* See the corresponding schedule form in the Scotch Companies Clauses Act, 1845, (8 & 9 Vict. c. 17,) and s. 15 of the same Act, cited ante, p. 12.

† As to what is comprised in the expression "undertaking," see per

8 & 9 VICT. c. 10. (in case such loan shall be in anticipation of the capital authorised to be raised) all future calls on shareholders], and all the tolls and sums of money arising by virtue of the said act, and all the estate, right, title, and interest of the company in the same; to hold unto the said *A.B.*, his executors, administrators, and assigns, until the said sum of pounds, together with interest for the same at the rate of for every one hundred pounds by the year, be satisfied [the principal sum to be repaid at the end of years from the date hereof (in case any period be agreed upon for that purpose)], [at or any place of payment other than the principal office of the company]. Given under our common seal, this day of in the year of our Lord
 [If executed in Scotland, insert here the testing clause of deeds executed in Scotland.*]

SCHEDULE (D.)

Schedule (D.)

Form of Bond,† (under s. 41, ante, p. 44.)

“The Company.”
 Bond, Number £
 By virtue of [here name the special act], we, “The Company,” in consideration of the sum of pounds to us in hand paid by *A.B.* of do bind ourselves and our successors unto the said *A.B.*, his executors, administrators, and assigns, in the penal sum of pounds.
 The condition of the above obligation is such, that if the said company shall pay to the said *A.B.*, his executors, administrators, or assigns, [at (in case any other place of payment than the principal office of the company be intended)], on the day of which will be in the year one thousand eight hundred and , the principal sum of pounds, together with interest for the same at the rate of pounds per centum per annum, payable half-yearly on the day of and day of then the above-written obligation is to become void, otherwise to remain in full force. Given under our common seal, this day of one thousand eight hundred and [If executed in Scotland, insert here the testing clause of deeds executed in Scotland.*]

SCHEDULE (E.)

Schedule (E.)

Form of Transfer of Mortgage or Bond, (under s. 46, ante, p. 51.)

I, *A.B.* of in consideration of the sum of paid to me by *G.H.* of do hereby transfer to the said *G.H.*,

Lord Cairns, L. J., in *Gardner v. London, Chatham, and Dover Railway Co.*, L. R., 2 Ch. 201, 216, 217; 15 W. R. 325; 36 L. J. (Ch.) 323; and as to the general effect of mortgages in this form, see the notes to ss. 38 and 42, *ante*, pp. 38-43, and 44-49.

* See the schedules to the Companies Clauses Consolidation (Scotland) Act, 1845; and s. 15 of the same Act, cited *ante*, p. 12.

† For form of Lloyd's bond, see p. 40, *ante*.

his executors, administrators, and assigns, a certain bond [or mort- 8 & 9 Vict. c. 16.
gage] number _____ made by "The _____ Company" to
bearing date the _____ day of _____ for securing
the sum of _____ and _____ interest [or, if such transfer be
by endorsement, the within security], and all my right, estate, and
interest in and to the money thereby secured [and if the transfer be
of a mortgage, and in and to the tolls, money, and property thereby
assigned]. In witness whereof I have hereunto set my hand and
seal, this _____ day of _____ one thousand eight hundred
and _____

[Here insert testing clause usual in Scotland, if
executed in Scotland, and if executed in Eng-
land, the attestation clause usual in England.*]

SCHEDULE (F.)

Form of Proxy, (under s. 76, ante, p. 66.)

Schedule (F.)

A.B., _____ one of the proprietors of "The
Company," doth hereby appoint C.D. of _____ to be the proxy
of the said A.B. in his absence, to vote in his name upon any matter
relating to the undertaking proposed at the meeting of the proprie-
tors of the said company, to be held on the _____ day of _____
next, in such manner as he, the said C.D., doth think proper. In
witness whereof the said A.B. hath hereunto set his hand [or, if a
corporation, say the common seal of the corporation], the
day of _____ one thousand eight hundred and _____

SCHEDULE (G.)

Form of Conviction, (under s. 157, ante, p. 122.)

Schedule (G.)

to wit.
Be it remembered, That on the _____ day of _____ in the
year of our Lord _____ A.B. is convicted before us, C., D., two
of Her Majesty's Justices of the Peace for the county of _____
[here describe the offence generally, and the time and place when and
where committed], contrary to the [here name the special act]. Given
under our hands and seals, the day and year first-above written.

C.
D.

THE COMPANIES CLAUSES ACT, 1863.

(26 & 27 VICT. CAP. 118.)

An Act for consolidating in one Act certain provisions frequently inserted in Acts relating to the constitution and management of Companies incorporated for carrying on undertakings of a public nature.—[28th July, 1863.]

8 & 9 Vict.
cc. 16 & 17.

WHEREAS the Companies Clauses Consolidation Act, 1845, and the Companies Clauses Consolidation (*Scotland*) Act, 1845, respectively, were passed in order to comprise in one general Act such provisions relating to the constitution and management of joint-stock companies incorporated for the purpose of carrying on undertakings of a public nature in *England* or *Ireland*, or in *Scotland*, respectively, as were at the times of the passing of those Acts usually introduced into Acts of Parliament relating to such companies :

And whereas sundry provisions of the like nature, but not comprised in the said general Acts respectively, are now frequently introduced into Acts of Parliament relating to such companies, and it is expedient to comprise such last-mentioned provisions also in one general Act, such Act to be applicable to *England* or *Ireland*, or to *Scotland*, as the case may require, and that as well for the purpose of avoiding the necessity of repeating such provisions in the Acts relating to such undertakings, as for ensuring greater uniformity in the provisions themselves :

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

I. This act may be cited as the Companies Clauses Act 1863.

II. This act shall be deemed to be divided into four parts, as follows: 26 & 27 Vict. c. 118.

Part I. relating to cancellation and surrender of shares; Division of act into parts.

Part II. relating to additional capital;

Part III. relating to debenture stock;

Part IV. relating to change of name

PART I.

CANCELLATION AND SURRENDER OF SHARES.

III. This part of this act shall apply to every company incorporated either before or after the passing of this act which obtains a special act incorporating this part of this act. Application of Part I.

IV. Where any share of the capital of the company is after the passing of this act declared forfeited (a) under and in pursuance of the provisions with respect to the forfeiture of shares for non-payment of calls contained in the Companies Clauses Consolidation Act, 1845, and the Companies Clauses Consolidation (*Scotland*) Act, 1845, respectively, and the forfeiture is confirmed by a meeting in accordance with the same provisions respectively, and notice of the forfeiture has been given,—then and in every such case, if the directors of the company are unable to sell the share for a sum equal to the arrears of calls and interest and expenses due in respect thereof, the company at any general meeting held not less than two months after such notice is given may, in case payment of the arrears of calls, interest, and expenses due in respect thereof is not made by the registered holder of the share before the meeting is held, resolve that the share instead of being sold shall be cancelled, and the share shall thereupon be cancelled accordingly. Power to company to cancel forfeited shares.

(a) As to forfeiture, see pp. 30-32.

V. A declaration in writing made by some credible person, in *England* or *Ireland* before a justice, and in *Scotland* before any sheriff or justice, stating that a sum of money sufficient to pay the arrears of calls, interest, and expenses due in respect of the share, could not at the time of the cancellation of the share be obtained for the same upon the Stock Exchange prescribed in the special act, and if Evidence for cancellation of forfeited shares.

26 & 27 VICT.
c. 118.

no Stock Exchange is prescribed then upon the Stock Exchange, as to *England*, of the city of *London*, and as to *Scotland* of the city of *Edinburgh*, and as to *Ireland* of the city of *Dublin*, shall be sufficient evidence of the fact so declared.

Payment of calls
in arrear not-
withstanding
cancellation.

VI. Where it is so resolved that any share shall be cancelled, the holder thereof shall, from and after the passing of the resolution, be precluded from all right and interest therein and in respect thereof; but the cancellation shall not affect the liability of the last registered holder of the share to pay to the company all arrears of calls, interest, and expenses due in respect of the share at the time of the cancellation, or the power of the company to enforce payment thereof by action or otherwise.

Value of for-
feited shares to
be deducted
from amount due
in respect
thereof.

VII. Provided always, that if the company enforces the payment of the arrears of calls, interest, and expenses under the last preceding provision, the value of the share at the time of the cancellation thereof shall be deducted from the amount then so due; provided also, that if payment of all arrears of calls, interest, and expenses is made before such meeting as aforesaid is held, the share shall revert to the person to whom it belonged at the time of forfeiture, and shall be re-entered on the company's register accordingly.

Company may
cancel forfeited
shares with con-
sent of holders.

VIII. Where any share is declared forfeited, or where any sum payable on any share remains unpaid, the company, with the consent in writing of the registered holder of the share, and with the sanction of a general meeting, may resolve that the share shall be cancelled, and immediately thereupon the share shall be cancelled, and all liabilities and rights with respect to the share shall thereupon be absolutely extinguished.

As to surrender
of shares.

IX. The company may from time to time accept, on such terms as they think fit, surrenders of any shares which have not been fully paid up.

No money to be
paid for cancella-
tion or sur-
render.

X. The company shall not pay or refund to any shareholder any sum of money for or in respect of the cancellation or surrender of any share.

XI. The company may from time to time, in lieu of any shares that have been cancelled or surrendered, issue new shares of such amounts as will allow the same to be conveniently apportioned or disposed of according to the resolution of any ordinary or extraordinary meeting of the company, and may from time to time fix the amounts and times of payment of the calls on any such new shares, and dispose thereof on such terms and conditions as may be so resolved upon: Provided, that the aggregate nominal amount of the new shares shall not exceed the aggregate nominal amount of the shares in lieu of which the new shares are issued, after deducting the amount actually paid up in respect of the shares cancelled or surrendered.

26 & 27 VICT.
c. 118.

Power to create
shares in lieu of
cancelled, for-
feited, &c.,
shares.

PART II.

ADDITIONAL CAPITAL.

New Ordinary Shares or Stock.

XII. Where any company, incorporated either before or after the passing of this act for the purpose of carrying on any undertaking, is authorised by any special act hereafter passed, and incorporating this part of this act, to raise any additional sum or sums by the issue of new ordinary shares (a), or by the issue of new ordinary stock, or (at the option of the company) by either of those modes,—then and in every such case the company, with the sanction of such proportion of the votes of the shareholders and stockholders entitled to vote in that behalf at meetings of the company, present (personally or by proxy) at a meeting of the company specially convened for the purpose, as is prescribed in the special act, and if no proportion is prescribed, then of three-fifths of such votes, may, for the purpose of raising the additional sum or sums, from time to time create and issue (according as the authority given by the special act extends to shares only, or to stock only, or to both) such new ordinary shares, of such nominal amount, and subject to the payment of calls of such amounts and at such times, as the company thinks fit, or such new ordinary stock as the company thinks fit.

Regulations as to
creation and
issue of ordinary
shares or new
ordinary stock.

(a) See as to new shares, *ante*, pp. 56–58.

26 & 27 VICT.
c. 118.

Preference Shares or Stock (a).

Regulations as to
creation and
issue of new pre-
ference shares or
new preference
stock.

XIII. Where any such company is authorised by any special act hereafter passed and incorporating this part of this act to raise any additional sum or sums by the issue of new preference shares, or by the issue of new preference stock, or (at the option of the company) by either of those modes,—then and in every such case the company, with the like sanction as aforesaid, may for the purpose of raising such additional sum or sums from time to time create and issue (according as the authority given by the special act extends to shares only, or to stock only, or to both) such new shares or new stock, either ordinary or preference, and either of one class and with like privileges, or of several classes and with different privileges, and of the same or different amounts, and respectively with any fixed, fluctuating, contingent, preferential, perpetual, terminable, deferred, or other dividend or interest, not exceeding the rate prescribed in the special act, and if no rate is prescribed then not exceeding the rate of five pounds *per centum per annum*, and subject (as to any such new shares) to the payment of calls of such amounts and at such times, as the company from time to time thinks fit:

Saving rights of
preference
shareholders.

Provided always, that any preference assigned to any shares or stock so issued under the special act shall not affect any guarantee or any preference or priority in the payment of dividend or interest, on any shares or stock, that may have been granted by the company under or confirmed by any previous act, or that may be otherwise lawfully subsisting.

(a) As to preference shares, see the notes to ss. 51 and 120 of the Companies Clauses Act, 1845, *ante*.

Preference
shares to be en-
titled to divi-
dends only out of
the profits of
each year.

XIV. The preference shares or preference stock so issued shall be entitled to the preferential dividend or interest assigned thereto, out of the profits of each year, in priority to the ordinary shares and ordinary stock of the company; but if in any year ending on the day prescribed in the special act, and if no day is prescribed, then on the thirty-first day of *December*, there are not profits available for the payment of the full amount of preferential dividend or interest for that year, no part of the deficiency shall be made good out of the profits of any subsequent year (a), or out of any other funds of the company.

(a) For cases in which arrears of dividends have been made up to

preference shareholders out of the profits of subsequent years, see the notes to s. 120 of the Companies Clauses Act, 1845, *ante*. 26 & 27 Vict. c. 118.

XV. The terms and conditions to which any preference share or preference stock is subject shall be clearly stated on the certificate of that preference share or portion of preference stock. Terms, &c., to be stated on certificates.

General Provisions as to new Shares or Stock.

XVI. If, after having created new shares or new stock, the company determines not to issue the whole of the new shares or new stock, they may cancel the unissued new shares or new stock. Unissued shares and stock may be cancelled.

XVII. If, at the time of the issue of new shares or new stock, the ordinary shares or ordinary stock of the company are or is at a premium, then, unless the company before the issue of the new shares or new stock otherwise determines, the new shares or new stock then issued shall be of such amount as will conveniently allow the same to be apportioned among the then holders of the ordinary stock and ordinary shares respectively, in proportion, as nearly as conveniently may be, to the ordinary shares and ordinary stock held by them respectively, and shall be offered to them at par in that proportion: Provided, that it shall not be obligatory on the company so to apportion or offer any new shares or new stock unless the amount of every new share or portion of new stock to be so offered would, if so apportioned, be at least the sum prescribed in the special act, and if no sum is prescribed, then at least ten pounds. If ordinary stock or shares at a premium, new shares or stock to be offered to existing ordinary shareholders.

XVIII. The offer of new shares or new stock shall be made by letter under the hand of the treasurer or secretary of the company given to every such shareholder or stockholder as aforesaid, or sent by post addressed to him according to his address in the shareholders' or stockholders' address book, or left for him at his usual or then last known place of abode in *England, Scotland, or Ireland* (as the case may require); and every such offer made by letter sent by post shall be considered as made on the day on which the letter in due course of delivery ought to be delivered at the place to which it is addressed. Offer to be made by letter.

XIX. The new shares or portions of new stock so offered New shares or stock to vest on acceptance.

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c. 118. shall vest in and belong to the shareholders or stockholders who accept the same, or their nominees.

As to disposal of new shares or stock to others. XX. If any shareholder or stockholder fails for the time prescribed in the special act, and if no time is prescribed then for one month after the offer to him of new shares or new stock, to signify his acceptance of the same or any part thereof, then and in every such case at the expiration of that period he shall be deemed to have declined the offer of such new shares or new stock or such part thereof as aforesaid, and the same may be disposed of by the company as hereinafter provided:

Power to enlarge time for accepting new shares or stock. Provided, that where a shareholder or stockholder, from absence abroad (a) or other cause satisfactory to the directors of the company, omits to signify within the time aforesaid his acceptance of the new shares or new stock offered to him, the directors, if they think proper, may permit him to accept the same, notwithstanding that such time has elapsed.

(a) See the cases on this subject, p. 58, *ante*.

General power to dispose of unappropriated new shares and stock. XXI. Subject to the foregoing provisions, the company may from time to time dispose of new shares and new stock at such times, to such persons, on such terms and conditions, and in such manner as the directors think advantageous to the company, but so that not less than the full nominal amount of any share or portion of stock be payable or paid in respect thereof.

PART III.

DEBENTURE STOCK.

Regulations as to creation and issue of debenture stock. XXII. Where any company, incorporated either before or after the passing of this act for the purpose of carrying on any undertaking, is authorised by any special act hereafter passed, and incorporating this part of this act, to create and issue debenture stock,—then and in every such case the company, with the sanction of such proportion of the votes of the shareholders and stockholders entitled to vote in that behalf at meetings of the company, present (personally or by proxy) at a meeting of the company specially convened for the purpose, as is prescribed in the special act, and if no proportion is prescribed, then of three-fifths of such votes, may from time to time raise all or any part

of the money which for the time being they have raised, or are authorised to raise, on mortgage or bond, by the creation and issue, at such times, in such amounts and manner, on such terms, subject to such conditions, and with such rights and privileges, as the company thinks fit, of stock to be called debenture stock, instead of and to the same amount as the whole or any part of the money which may for the time being be owing by the company on mortgage or bond, or which they may from time to time have power to raise on mortgage or bond, and may attach to the stock so created such fixed and perpetual preferential interest not exceeding the rate prescribed in the special act, and if no rate is prescribed, then not exceeding the rate of four pounds *per centum per annum*, payable half-yearly or otherwise, and commencing at once or at any future time or times, when and as the debenture stock is issued, or otherwise, as the company thinks fit.

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c. 118.

XXIII. Debenture stock, with the interest thereon, shall be a charge upon the undertaking of the company, prior to all shares or stock of the company, and shall be transmissible and transferable in the same manner and according to the same regulations and provisions as other stock of the company, and shall in all other respects have the incidents of personal estate.

Debenture stock
to be a prior
charge.

XXIV. The interest on debenture stock shall have priority of payment over all dividends or interest on any shares or stock of the company, whether ordinary or preference or guaranteed, and shall rank next to the interest payable on the mortgages or bonds for the time being of the company legally granted before the creation of such stock; but the holders of debenture stock shall not, as among themselves, be entitled to any preference or priority.

Interest on de-
benture stock to
be a primary
charge.

XXV. If within thirty days after the interest on any such debenture stock is payable the same is not paid, any one or more of the holders of the debenture stock holding, individually or collectively, the sum in nominal amount thereof prescribed in the special act, and if no sum is prescribed, then a sum equal to one tenth of the aggregate amount which the company is for the time being authorised to raise by mortgage, by bond, and by debenture stock, or the sum of ten thousand pounds, whichever of

Payment of
arrears may be
enforced by ap-
pointment of
receiver or judi-
cial factor.

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the two last-mentioned sums is the smaller sum, may (without prejudice to the right to sue in any court of competent jurisdiction for the interest in arrear) require the appointment in *England or Ireland* of a receiver, and in *Scotland* of a judicial factor (a).

(a) See s. 53 of the Companies Clauses Act, 1845, with regard to receivers : *ante*, p. 53.

Mode of ap-
pointing receiver
or judicial factor.

XXVI. Every such application for a receiver shall be made to two justices, and every such application for a judicial factor shall be made to the Court of Session; and on any such application the justices or court (as the case may be), by order in writing, after hearing the parties, may appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of the interest, until all the arrears of interest then due on the debenture stock, with all costs, including the charges of receiving the tolls or sums, are fully paid; and upon such appointment being made all such tolls or sums shall be paid to and received by the person so appointed; and all money so received shall be deemed so much money received by or to the use of the several persons interested in the same, according to their several priorities.

The receiver or judicial factor shall distribute rateably and without priority, among all the proprietors of debenture stock to whom interest is in arrear, the money which so comes to his hands, after applying a sufficient part thereof in or towards satisfaction of the interest on the mortgages and bonds of the company.

As soon as the full amount of interest and costs has been so received, the power of the receiver or judicial factor shall cease, and he shall be bound to account to the company for his acts or intromissions or the sums received by him, and to pay over to the company any balance that may be in his hands.

Arrears may be
recovered by
action or suit.

XXVII. If the interest on debenture stock is in arrear for thirty days next after any of the respective days whereon the same is payable, the holder for the time being thereof may (without prejudice to his power to apply for the appointment of a receiver or judicial factor) recover the arrears with costs by action or suit against the company in any court of competent jurisdiction.

XXVIII. The company shall cause entries of the debenture stock from time to time created to be made in a register to be kept for that purpose, wherein they shall enter the names and addresses of the several persons and corporations from time to time entitled to the debenture stock, with the respective amounts of the stock to which they are respectively entitled; and the register shall be accessible for inspection and perusal at all reasonable times to every mortgagee, bondholder, debenture stock holder, shareholder, and stockholder of the company, without the payment of any fee or charge.

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c. 118.

Debenture stock
to be registered.

XXIX. The company shall deliver to every holder of debenture stock a certificate stating the amount of debenture stock held by him; and all regulations or provisions for the time being applicable to certificates of shares in the capital of the company shall apply, *mutatis mutandis*, to certificates of debenture stock.

Company to
deliver certi-
cate to holders of
debenture stock.

XXX. Nothing herein or in the special act authorising the issue of debenture stock contained shall in any way affect any mortgage or bond at any time legally granted by the company before the creation of such stock, or any power of the company to raise money on mortgage or bond, but the holders of all such mortgages and bonds shall, during the continuance thereof respectively, be entitled to the same priorities, rights, and privileges in all respects as they would have been entitled to if the special act authorising the issue of debenture stock had not been passed.

Mortgages not
affected by this
act.

XXXI. Debenture stock shall not entitle the holders thereof to be present or vote at any meeting of the company, or confer any qualification, but shall, in all respects not otherwise by or under this act or the special act provided for, be considered as entitling the holders to the rights and powers of mortgagees of the undertaking other than the right to require repayment of the principal money paid up in respect of the debenture stock.

Holders of de-
benture stock
not to vote.

XXXII. Money raised by debenture stock shall be applied exclusively either in paying off money due by the company on mortgage or bond, or else for the purposes to

Application of
money raised.

26 & 27 Vict.
c. 118. — which the same money would be applicable if it were raised on mortgage or bond instead of on debenture stock.

Separate ac-
counts of deben-
ture stock. XXXIII. Separate and distinct accounts shall be kept by the company, showing how much money has been received for or on account of debenture stock, and how much money borrowed or owing on mortgage or bond, or which they have power so to borrow, has been paid off by debenture stock, or raised thereby, instead of being borrowed on mortgage or bond.

Borrowing
powers extin-
guished to extent
of debenture
stock. XXXIV. The powers of borrowing and re-borrowing by the company shall, to the extent of the money raised by the issue of debenture stock, be extinguished.

Application of
Part III. to
mortgage prefer-
ence stock, and
funded debt. XXXV. The provisions of this part of this act shall be deemed to apply to mortgage preference stock, and to funded debt, as the case may require, in all respects as if mortgage preference stock or funded debt were mentioned throughout this part of this act wherever debenture stock is mentioned therein.

PART IV.

CHANGE OF NAME.

Continuance of
powers. XXXVI. Where by any special act hereafter passed and incorporating this part of this act the name of any company incorporated either before or after the passing of this act for the purpose of carrying on any undertaking is changed,—then and in every such case from the passing of the special act the company by their new name shall have and may exercise the powers then vested in the company by their original name; and all acts relating to the company by their original name shall be read and interpreted as if throughout those acts, wherever the original name of the company or any reference to the company by their original name occurs, the new name of the company or a reference to the company by their new name were substituted.

Actions, &c.,
not to abate. XXXVII. No action, suit, bill, process, writ, indictment, information, or other proceeding, whether civil or criminal,

at or immediately before the passing of the special act commencing and is then pending,—either at the suit of the company, by their original name, against any other corporation or any person, or at the suit or inquiry, by their original name,—shall abate, determine, be otherwise impeached or affected for or by reason of change of the name of the company; nor shall any tender, requisition, warrant, summons, pleading, criminal writ, or other process, record, deed, agreement, writing, or instrument then or thereafter made, issued, written, or commenced, be deemed to be void, discharged, invalidated, prejudiced, or affected on account of the company or their undertaking being therein respectively called by the original name of the company or otherwise; and it shall not be necessary in any bill, suit, action, information, proceeding, notice, tender, requisition, warrant, summons, pleading, civil or criminal writ, or process, or in any record, deed, contract, agreement, writing, or other instrument or matter, to aver that the company had been called or known for any period by its original name of the company, or that their undertaking had been called or known within that period by the original name of the undertaking, and that by the special act effecting the change the names of the company and their undertaking were changed, and that after the passing of the special act the company had been called or known by its new name and their undertaking by its new name; and shall be deemed true, lawful, and sufficient therein to state the style and describe the company by their new name and their undertaking by its new name, in the same manner as if the company had been originally incorporated, or known by their new name, and as if their undertaking had been originally called or known by its new

26 & 27 VICT.
C. 118.

[CVIII. Notwithstanding the change of the name of the company, everything before the passing of the special act effecting the change done, suffered, or confirmed under the authority of any other act shall be as valid as if the special act effecting the change were not passed; and the provisions of the original and last-mentioned special act respectively shall accordingly be subject and without prejudice to every-

General saving
of rights.

26 & 27 Vict.
c. 118.
—

thing so done, suffered, or confirmed before the passing of the last-mentioned special act, and to all rights, liabilities, claims, and demands, then present or future, which, if the change of name had not happened and such last-mentioned special act had not been passed, would be incident to or consequent on anything so done, suffered, or confirmed.

Contracts, &c.,
preserved.

XXXIX. Notwithstanding the change of the name of the company, all deeds, instruments, purchases, sales, securities, and contracts before the passing of the special act effecting the change made under any other act, or with reference to the purposes thereof, shall be as effectual to all intents in favour of, against, and with respect to the company as if the name of the company had remained unchanged.

THE LANDS CLAUSES CONSOLIDATION ACT,
1845.

(8 & 9 VICT. CAP. 18.)

An Act for consolidating in one Act certain provisions usually inserted in Acts authorising the taking of lands for undertakings of a public nature.—[8th May, 1845.]

WHEREAS it is expedient to comprise in one general act sundry provisions usually introduced into acts of Parliament relative to the acquisition of lands required for undertakings or works of a public nature (a), and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for insuring greater uniformity in the provisions themselves: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That this act shall apply to every undertaking authorised by any act which shall hereafter be passed (b), and which shall authorise the purchase or taking of lands for such undertaking, and this act shall be incorporated with such act; and all the clauses and provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other act which shall be incorporated with such act, form part of such act, and be construed together therewith as forming one act.

(a) Upon the construction of an act for the purpose of giving to the leases granted by the Westminster Improvement Commissioners a title as against charges and incumbrances already incurred, it was

Act to apply to all undertakings authorised by acts hereafter to be passed.

The Lands Clauses Act applies only to public undertakings.

142 *Lands Clauses Consolidation Act, 1845, ss. 2, 3.*

- S & P VICT. c. 18. held that the Lands Clauses Act did not apply to it, as it was in the nature of a Private Estate Bill, and as the Consolidation Act applies only to the taking of land for public purposes : (*Wale v. Westminster Palace Hotel Co.*, 8 C. R. N. S. 276 ; 7 Jur. N. S. 26 ; 9 W. R. 14.)
- Is not retrospective. (b) The Lands Clauses Act is not retrospective in its operation : (*Re Cherry*, 31 L. J. (Ch.) 351 ; 10 W. R. 305 ; 6 L. T. N. S. 31.)

INTERPRETATION CLAUSES.

- Interpretations in this act : And with respect to the construction of this act, and of acts to be incorporated therewith, be it enacted as follows :—
- “Special act :” II. The expression “the special act” (a), used in this act, shall be construed to mean any act which shall be hereafter passed which shall authorise the taking of lands for the undertaking to which the same relates, and with which this act shall be so incorporated as aforesaid ; and the word
- “Prescribed :” “prescribed,” used in this act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act, and the sentence in which such word shall occur shall be construed as if, instead of the word “prescribed,” the expression “prescribed for that purpose in the special
- “The works :” act” had been used ; and the expression “the works” or “the undertaking” shall mean the works or undertaking, of whatever nature, which shall by the special act be
- “Promoters of the undertaking.” authorised to be executed ; and the expression, “the promoters of the undertaking,” shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special act empowered to execute such works or undertaking (b).
- Construction of special act. (a) Where a special act contains a declaration that it should be judicially taken notice of as a public act, it cannot be treated or construed as a private assurance, so as to constitute a contract between the company and a landowner for the construction of the works authorised or required to be made by such act : (*Hargreaves v. Lancaster and Preston Railway Co.*, 1 R. C. 416.)
- All necessary clauses of special act must be set out in a bill in equity. A declaration that the special act shall be construed as a public act, has not the effect of enabling the Court to take into consideration clauses of a special act not set out in the bill : (*Bailey v. Birkenhead, Lancashire, and Cheshire Junction Railway Co.*, 12 Bea. 433 ; 6 R. C. 256.)
- Description of defendants by corporate name. (b) It would seem that a declaration describing the defendants by their corporate name would not be demurrable : (*Woolf v. City Steamboat Co.*, 7 C. B. 103 ; 13 Jur. 456 ; 18 L. J. (C. P.) 125 ; and see *Broughton v. Manchester and Salford Waterworks Co.*, 3 B. & A. 1.)
- Interpretations in this and the special act : III. The following words and expressions, both in this and the special act, shall have the several meanings hereby

assigned to them, unless there be something either in the subject or context repugnant to such construction: (that is to say,)

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number:

Words importing the masculine gender only shall include females:

The word "lands" (a) shall extend to messuages, lands, tenements, and hereditaments of any tenure:

The word "lease" shall include an agreement for a lease:

The word "month" shall mean calendar month:

The expression "superior courts" shall mean her Majesty's superior courts of record at *Westminster* or *Dublin*, as the case may require:

The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath:

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town (b):

The word "sheriff" shall include under-sheriff, or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff, or by any clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate:

The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognisance of any such justice shall arise, and who shall not be in-

S & 9 VICT. C. 18.

terested in the matter; and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two justices (c) assembled and acting together:

"Two justices:"

Where, under the provisions of this or the special act, or any act incorporated therewith, any notice shall be required to be given to the owner (d) of any lands, or where any act shall be authorised or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special act, would be enabled to sell and convey lands to the promoters of the undertaking:

"Owner:"

"The bank."

The expression "the bank" shall mean the Bank of England where the same shall relate to moneys to be paid or deposited in respect of lands situate in England, and shall mean the Bank of Ireland, where the same shall relate to moneys to be paid or deposited in respect of lands situate in Ireland.

Easements.

(a) Whether an "easement" is "land" within the meaning of this clause, see *Pinchin v. London and Blackwall Railway Co.*, 1 K. & J. 34; 24 L. J. (Ch.) 417; and *per* Lord Cranworth, C., 5 De G. M. & G. 861, 862.

Rights of way, common, and turbary.

Rights of way, of common, and of turbary, are not within the meaning of the act: (*Ibid.*) But see *Eagle v. Charing Cross Railway Co.*, L. R. 2 C. P. 638; *Bird v. Great Eastern Railway Co.*, 19 C. B. N. S. 268; 34 L. J. (C. P.) 366. See also on this subject the notes to s. 68, *post*.

"Town."

(b) As to the meaning of the word "town," and of "lands situate within a town," see *Carington v. Wycombe Railway Co.*, L. R. 2 Eq. 825; 3 Ch. App. 377; and notes to s. 128, *post*. And see *Elliot v. South Devon Railway Co.*, 2 Exch. 725; *R. v. Cottle*, 16 Q. B. 412.

But see *Davies v. South Staffordshire Railway Co.*, 2 L. M. & P. 599.

Power of metropolitan magistrates under 2 & 3 Vict. c. 71, s. 14.

(c) By s. 14 of 2 & 3 Vict. c. 71, it is enacted, that it shall be lawful for any one of the metropolitan police magistrates to do alone any act, at any of the metropolitan police courts, which, by

any law then in force, or by any law not containing any express enactment to the contrary, thereafter to be made, was or should be directed to be done by more than one justice.

(d) As to the legal meaning of the word "owner," see *R. v. Kerrison*, "Owner." 1 M. & S. 435; *Bullard v. Harrison*, 4 M. & S. 387; *Russell v. Shenton*, 3 Q. B. 449; *Chauntler v. Robinson*, 4 Exch. 163; 19 L. J. (Ex.) 170.

IV. And be it enacted, That in citing this act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Lands Clauses Consolidation Act, 1845."

V. And whereas it may be convenient in some cases to incorporate with Acts of Parliament hereafter to be passed (a) some portion only of the provisions of this act (b): Be it therefore enacted, That, for the purpose of making any such incorporation, it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act in the words introductory to the enactment with respect to such matter) shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate.

(a) Lord Westbury, C., in *Re Cherry* (31 L. J. (Ch.) 351; 10 W. R. 305; 7 Jur. N. S. 1184; 6 L. T. N. S. 31) observed that the Lands Clauses Act is not retrospective.

(b) In the last-cited case an Act, passed before the Lands Clauses Act, gave certain powers of reinvestment to the Commissioners of Woods and Forests, and these powers, under the words "such and the same powers, authorities, privileges, and exemptions, as were given in the former Act," were extended by an act passed subsequently to the Lands Clauses Act. These words were held by his Lordship to exclude the operation of the Lands Clauses Act.

In a case in which it appeared that the Westminster Bridge Act, 1859, did not incorporate the Lands Clauses Act, 1845, and omitted to provide for a certain class of costs, the same learned judge held that the provisions of the Consolidation Act with respect to these costs should be taken to be incorporated in the special act: (*Ex parte Vicar of St Sepulchre's*, 33 L. J. (Ch.) 372; 12 W. R. 499; 10 Jur. N. S. 298; 9 L. T. N. S. 819; 3 N. R. 594.) And his Lordship explained his decision in *Re Cherry*, *ubi supra*, by showing that in that case there was a mere reference as to costs, to an Act anterior, and not, as in the case before him, subsequent, to the Lands Clauses Act.

8 & 9 VICT. c. 18. In the first case upon the question of the incorporation of the Consolidation Act, in an extension Act not expressly providing for it, it was held that, whenever after the passing of the Lands Clauses Act, an Act passes, giving further powers for the extension of an "undertaking" authorised by an act passed before the Lands Clauses Act, the Lands Clauses Act is to apply to the whole "undertaking," as if it had always been applicable to it, so far as any of its provisions remain applicable, or there is anything to be done under it. Upon this principle, s. 80 was held to apply under the above circumstances: (*Ex parte Eton College*, 20 L. J. (Ch.) 1; 15 Jur. 45.)

Lancashire and Yorkshire Railway Co. v. Evans. And this was expressly followed in a case where the applicability of s. 68 of the Lands Clauses Act was in question: (*Lancashire and Yorkshire Railway Co. v. Evans*, 15 Bea. 322.)

Re Ellison. And the words "the special act or any act incorporated therewith" occurring in s. 80 were held to be a good reason for adopting the rule referred to: (*Re Ellison*, 8 De G. M. & G. 62; 25 L. J. (Ch.) 379; followed in *Re Derriman*, 1 W. N. 269.)

Rule dissented from. An apparent exception to the rule above stated is afforded by a case before Vice-Chancellor Kindersley, who, on the ground that the contract in the matter before him was incomplete, held that the provisions of the Lands Clauses Act could not apply, but observed that this was his only reason for differing from Lord Truro's decision in the Eton College case: (*Re Neachell*, 3 W. R. 634; 25 L. T. 280.) But Sir G. L. Turner, L. J., in *Re Ellison* (*ubi supra*) was unable to hold the ground of the Vice-Chancellor Kindersley's decision in *Re Neachell* to be valid, and the latter case is therefore practically overruled.

Re Holden. Another attempt to set aside the rule in the Eton College case was made in a case before Vice-Chancellor Wood, who thought that a company ought not to be allowed to avail themselves of new powers conferred by the Lands Clauses Act without coming under the new liabilities created by that Act: (*In re Holden's Estate*, 3 W. R. 644; 1 Jur. N. S. 995.) But the facts of this case render it identical with *Re Ellison*, and it cannot therefore be admitted to be law. Where, however, an Act passed before the Lands Clauses Act has been subsequently repealed, but the repealing Act (which incorporates the Lands Clauses Act) expressly provides that the costs of reinvestment of money paid in under the repealed Act shall follow the provisions of the repealed Act, such costs alone will be allowed: (*Re St Katherine Docks Co.*, 1 W. N. 291; 14 W. R. 978.)

Construction of old railway acts. It may be remarked that under the old railway acts, before the Lands Clauses Act was passed, the Court construed their provisions as to costs strictly according to the terms of the Act: (*Re Strachan*, 20 L. J. (Ch.) 511; 9 Hare, 185. See the notes to s. 80, *post*.)

PURCHASE OF LANDS BY AGREEMENT.

Purchase of lands by agreement.

Power to purchase lands by agreement.

And with respect to the purchase of lands by agreement, be it enacted as follows:

VI. Subject to the provisions of this and the special act it shall be lawful for the promoters of the undertaking (a) to agree with the owners (b) of any lands by the special act

authorised to be taken (c), and which shall be required for the purposes of such act (d), and with all parties having any estate or interest in such lands, or by this or the special act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever (e).

(a) It is not clear from the numerous cases upon the subject what is the precise binding nature of contracts entered into between promoters and landowners before the passing of a railway act, in consideration of the withdrawal by landowners of their opposition to the passage of the bill through Parliament.

Such agreements were held by Lord Cottenham to be valid and binding upon the company when incorporated by their act: (*Edwards v. Grand Junction Railway Co.* 1 My. & Cr. 650, 672; *Stanley v. Chester and Birkenhead Railway Co.*, 3 My. & Cr. 773; 9 Sim. 264; *Lord Petre v. Eastern Counties Railway Co.*, 1 R. C. 462. And see *Greenhalgh v. Manchester and Birmingham Railway Co.*, 3 My. & Cr. 784; *Vauxhall Bridge Railway Co. v. Spencer*, Jac. 64.)

But these decisions have in later cases been much dissented from (if not actually overruled) in the cases of *Caledonian Railway Co. v. Magistrates of Helensburgh*, 2 Macq. 391; *Williams v. St George's Harbour Co.*, 2 De G. & J. 547, and other cases; and they were especially disapproved of by Sir R. T. Kindersley, V.-C., in *Earl of Shrewsbury v. North Staffordshire Railway Co.*, L. R. 1 Eq. 593, 616, 617; 35 L. J. (Ch.) 156; 14 W. R. 220; 13 L. T. N. S. 648; 12 Jur. N. S. 63.

Where, however, there is a clear agreement by the promoters to take the land in consideration of the withdrawal of opposition, the landowner may sustain an action in case of the breach of it, although the railway be abandoned: (*Bland v. Crowley*, 6 Exch. 522; 20 L. J. (Ex.) 218; 6 R. C. 756.)

And it has been frequently held that, if the company have received the benefit of such agreements, or have actually adopted them since their incorporation, they will be enforced in equity: (*Gooday v. Colchester Railway Co.*, 17 Bea. 132; *Williams v. St George's Harbour Co.*, 2 De G. & J. 547; *Preston v. Liverpool, &c., Railway Co.*, 1 Sim. N. S. 586; *Earl of Lindsey v. Great Northern Railway Co.*, 10 Hare, 664; *Eastern Counties Railway Co. v. Hawkes*, 5 H. L. Ca. 356. But see *per Lord St Leonards*, 5 H. L. Ca. 368.)

But several cases show that, in order to be binding upon the future company, contracts of this nature must be within the powers of the company as incorporated by its act of Parliament: (*Caledonian Railway Co. v. Magistrates of Helensburgh*, 2 Macq. 391; *Preston v. Liverpool, Manchester, and Newcastle Railway Co.*, 5 H. L. Ca. 605, 621; *Proprietors of the Leominster and Shrewsbury Canal v. Shrewsbury and Hereford Railway Co.*, 3 K. & J. 654; *Webb v. Lord James Stuart*, 1 De G. M. & G. 721; 21 L. J. (Ch.) 450; *Bedford and Cambridge Railway Co. v. Stanley*, 2 J. & H. 746; 32 L. J. (Ch.) 60; 9 Jur. N. S. 152.)

Nor must the contract be conditional, or vague, or dependent

S & D VICT. c. 18.

Nature of contracts with promoters.

Lord Cottenham's decisions.

Dissent therefrom.

Secus, where agreement is clear and opposition withdrawn.

Where company have received benefit of acts of promoters.

Such contracts must be *intra vires* of the company.

And must not be conditional on

- 8 & 9 Vict. c. 18. upon the construction of the railway, or the taking of the land: (*Preston v. Liverpool, Manchester, and Newcastle Railway Co.*, 5 H. L. Ca. 605; *Gage v. Newmarket Railway Co.*, 18 Q. B. 457; 7 R. C. 168; 21 L. J. (Q. B.) 398; *Webb v. Direct London and Portsmouth Railway Co.*, 1 De G. M. & G. 521; 20 L. J. (Ch.) 566; 9 Hare, 129; *Lord James Stuart v. London and North-Western Railway Co.*, 1 De G. M. & G. 721; 16 Jur. 209; 21 L. J. (Ch.) 451.) But the contract must expressly contain the terms upon which the opposition is to be withdrawn: (*Aldred v. North Midland Railway Co.*, 1 R. C. 404, and *Hargreaves v. Lancashire, &c., Railway Co.*, 1 R. C. 416.)
- Where land-owner is a peer. It is not a ground of objection that the landowner happens to be a peer of the realm, unless it appears that it was intended to influence his vote as a member of Parliament by the payment of a consideration: (*Lord Petre v. Eastern Counties Railway Co.*, 1 R. C. 462; *Lord Howden v. Simpson*, 10 A. & E. 820; 3 R. C. 294; *Earl of Shrewsbury v. North Staffordshire Railway Co.*, L. R. 1 Eq. 593, 613; 35 L. J. (Ch.) 156; 14 W. R. 220; 13 L. T. N. S. 648; 12 Jur. N. S. 63.)
- Sums paid for withdrawal of opposition belong to the inheritance. It is not, however, allowed that the landowner, not being absolutely entitled to the land, should put into his pocket sums paid for the withdrawal of opposition to the bill, but they are bound to hold such sums as trustees for the inheritance: (*Pole v. Pole*, 2 Dr. & Sm. 420; *Earl of Shrewsbury v. North Staffordshire Railway Co.*, L. R. 1 Eq. 593; 35 L. J. (Ch.) 156; 14 W. R. 220; 13 L. T. N. S. 648; 12 Jur. N. S. 63; and see s. 73, *post*.)
- Contracts under the Railways Construction Facilities Act, 1864. With respect to railway companies to which the Railways Construction Facilities Act, 1864, (27 & 28 Vict. c. 121,) is applicable, the 30th section of that Act provides that contracts made before the company's incorporation between landowners and promoters shall be as binding as if they had been entered into by the company.
- Equitable tenant for life. (b) An equitable tenant for life may contract to sell, but cannot convey, the land, without the concurrence of the trustees: (*Lippincott v. Smyth*, 29 L. J. (Ch.) 520; 8 W. R. 336; 6 Jur. N. S. 311; 4 L. T. N. S. 79.)
- Death of owner. If the "owner" die before completion of the contract, devising his property in trust for his children, some of whom are infants, but without a sufficient trust for sale, each party must pay his own costs of the suit necessary in consequence of the death: (*London and South-Western Railway Co. v. Bridger*, 12 W. R. 948.)
- The case is different where the difficulty arises, not from the accident of the death before a conveyance could be made, but where a landowner, with the knowledge of the existence of the contract, nevertheless, by dying intestate, allows the estate to devolve upon an infant heir, and renders a suit inevitable. See as to this subject the notes to s. 82, *post*.
- Lands authorised to be taken. (c) The lands "authorised to be taken" are those described and comprised in the special act and the plans deposited with the bill.
- Corrections in plans. As to corrections of such plans, see the 7th section of the Railways Clauses Act, 1845, (*post*), and *Taylor v. Clemson*, 11 Cl. & Fin. 610, and *Ware v. Regent's Canal Co.*, 3 De G. & J. 212.
- Doubts construed in favour of landowners. Doubts with respect to what lands are authorised to be taken are generally construed in favour of the landowner: (*Simpson v. South Staffordshire Waterworks Co.*, 13 W. R. 729; 6 N. R. 184; 34 L. J.

80; 11 L. T. N. S. 411; 12 L. T. N. S. 360; *Webb v. Manchester* 8 & 9 VICT. c. 18. *eds Railway Co.*, 4 My. & Cr. 120.)

As to the purposes for which lands may be required to be "Required for the purposes of such act." and lawfully used, see the 16th and 45th sections of the Rail-
Clauses Act, *post*, and the cases thereon.

The Court of Chancery has jurisdiction to enforce specifically Specific perform-
its made under this section: * (*Inge v. Birmingham and Stour* *ance.*

Railway Co., 3 De G. M. & G. 658; 1 Sm. & Gif. 347.) See
as to the remedies of unpaid vendors against railway com-
the note to s. 85, *post*. The rights of an unpaid vendor
t a railway company, and his remedies by declaration of his
junction, or sale, are apparently identical, whether his land be
under an agreement or by compulsion. See *Walker v. Ware*,
am. and *Buntingford Railway Co.*, L. R. 1 Eq. 195; *Attorney-
v. Sittingbourne and Sheerness Railway Co.*, L. R. 1 Eq. 636;
of Winchester v. Mid-Hants Railway Co., L. R. 5 Eq. 17;
ma v. Great Eastern Railway Co., 3 W. N. 148; *Wing v.
ham and Hampstead Junction Railway Co.*, 3 W. N. 190.

Sanderson v. Cockermouth and Workington Railway Co., 19 Inquiry in Cham-
(Ch.) 503; 2 H. & T. 327, an inquiry in Chambers was bers as to con-
nd as to the mode in which a contract to construct a siding struction of
approaches ought to be completed. And see *Lytton v. Great works.*
ern Railway Co., 2 K. & J. 394.

mode of ascertaining the amount of compensation must not Uncertainty in
een left uncertain by the contract: (*Morgan v. Milman*, 3 De contracts.
& G. 24; 17 Jur. 193.)

company are treated as having abandoned their agreement if Abandonment
ubsequently exercise their compulsory powers with respect to by subsequent
nd comprised in the agreement: (*Bedford and Cambridge exercise of com-
y Co. v. Stanley*, 2 J. & H. 746; 32 L. J. (Ch.) 60; 9 Jur. pulsory powers.
152; 1 N. R. 162.)

to how far a contract, enforceable in equity, is constituted by Whether notice
ptice to treat and assessment of the compensation, see the to treat consti-
to s. 18, *post*. tutes an enforce-
able contract.

the law with respect to the mode in which directors may bind
elves by contract, see the notes to s. 97 of the Companies
es Act, *ante*, p. 89, *et seq.*

ere the land is taken under agreement, the time of pay- Time of payment
of the purchase-money is a matter of arrangement. The of purchase-
money.

Clauses Act does not provide for this: (*Hutton v. London and
Western Railway Co.*, 7 Ha. 259.)

where interest was to be paid from the day of the commence- Interest.
of the works until the purchase-money was paid, and the
were not begun for two years, a decree for immediate specific
mance was refused: (*Bodington v. Great Western Railway*, 13
44.)

as also been decided that, in the absence of express provision, Company must
ompany must complete within a reasonable time; and that complete within
reasonable time.
ave no right to say that they might complete whenever they

he absence of any provision in the Lands Clauses Act with regard
s where lands are taken by agreement would seem to make it neces-
provide expressly for them in any such agreement.

8 & 9 VICT. c. 18. wanted the lands, before the expiration of their compulsory powers: (*Baker v. Metropolitan Railway Co.*, 31 Bea. 504; 32 L. J. (Ch.) 7.)

Parties under disability enabled to sell and convey.

VII. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release; (that is to say,) all corporations, tenants in tail, (a), or for life (b), married women (c) seised in their own right or entitled to dower, guardians, committees (d) of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised (e) by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics, and idiots respectively could have exercised the same power under the authority of this or the special act, if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their cestuique trusts, whether infants, issue unborn, lunatics, femmes covert, or other persons, and that to the same extent as such cestuique trusts respectively could have exercised the same powers under the authority of this and the special act if they had respectively been under no disability.

Estate tail inalienable by statute.

(a) A tenant in tail of an estate tail under an act of Parliament may sell and convey, under the Lands Clauses Act, so as to bar his

heirs in tail and the remaindermen, notwithstanding his statutory s & 9 Vic. c. 18. disability to bar the entail: (*In re Cuckfield Burial Board, Ex parte Earl of Abergavenny*, 19 Bea. 153; 24 L. J. (Ch.) 585.)

But as the reversion in that case was in the Crown, which is not specially named in the Lands Clauses Act, the concurrence of the Crown could not be dispensed with: (*Ibid.* And see *Duarris on Statutes*, 2d ed., p. 523.)

(b) An equitable tenant for life must procure the concurrence of Equitable tenant the trustees to the conveyance of the land: (*Lippincott v. Smyth*, for life, 29 L. J. (Ch.) 520; 8 W. R. 336; 6 Jur. N. S. 311; 2 L. T. N. S. 79.)

(c) Where under a settlement a feme covert tenant for life, for Married woman. her sole and separate use, with a power to appoint the land, and, in default of appointment, for her heirs, conveyed the fee to the plaintiff, it was held that the defendants were not bound during her lifetime to take a conveyance from the plaintiff without the concurrence of the trustees of the settlement: (*Hall v. London, Chatham, and Dover Railway Co.*, 1 W. N. 144; 14 L. T. N. S. 351.)

Where land stood limited to one for life, with remainder to a Married woman's husband and wife in fee, it was held that the interest of the married estate in remainder will woman would pass under this section: (*Cooper v. Gosling*, 9 Jur. pass, N. S. 1006; 11 W. R. 931; 9 L. T. N. S. 77.)

(d) Where a company had contracted with a person of unsound Lunatic. mind, who had not, however, been so found by inquisition, the money paid in by the company (who had ultimately proceeded under their compulsory powers) was held to be paid in, in respect of land belonging to a person seised in fee, and competent to sell; and a conversion was held to have taken place accordingly: (*In re Conversion. East Lincolnshire Railway Act, Ex parte Flamank*, 1 Sim. N. S. 260.)

See also *Midland Railway Co. v. Oswin*, 1 Coll. C. C. 74; 3 R. C. 497.

As to conversion see ss. 18, 69, and 76, *post*, and notes.

Where a railway company served a notice to treat upon a person Committee. of unsound mind, (not so found by inquisition,) and the purchase-money was assessed by a jury, there being no committee, on the death of the lunatic, the title of the company could not be completed without an application to the Court: (*Midland Railway Co. v. Oswin*, 1 Coll. C. C. 74, 80; 3 R. C. 497.)

And where the land was in mortgage, and the mortgagor was of Lunatic mort- unsound mind, in the absence of a committee, the Court appointed gator; guardian a guardian *ad litem* to appear for the lunatic on the hearing of a ad litem. petition presented by the mortgagees, and no suit or commission was deemed necessary: (*Greaves v. Great Northern Railway Co.*, 2 Eq. Rep. 516; 23 L. T. 53.)

Committees must obtain the sanction of the Lord Chancellor, Committees can- and not merely that of the Master, in order to enable them to con- not consent to sent to the passing of a railway bill which affects the lunatic's lands, passing of a bill. or to a contract for the sale of those lands after the passing of the Nor to a contract act. They have no authority by virtue of their office to do these for sale of luna- acts: (*In re Brown*, 1 M'N. & G. 201.) tic's land.

A lunatic's land being taken by a corporation under an agreement Costs. with the committee under this section, the costs of appearance of Next of kin. the next of kin, upon a petition for leave to convey, were declared

152 *Lands Clauses Consolidation Act, 1845, ss. 8, 9.*

s. 8 & 9 Vict. c. 13. to be payable by the corporation: (*In re Briscoe*, 2 De G. J. & S. 249.)

Costs of heir-at-law of lunatic. And the costs of the attendance of the heir-at-law before the Master are payable by the company: (*In re Walker*, 7 R. C. 129.)

Reference to master. In a similar case, the railway company were ordered to pay the costs of a reference to the Master, as to the propriety of a sale of a part of the lunatic's land: (*In re Taylor*, 1 M'N. & G. 210.)

Costs generally. See further as to costs the notes to s. 80, *post*.

Service of notice on next friend. (e) Notice to treat served upon the infant or next friend, instead of the testamentary guardian, where the special act directed service of such notices to be made upon the latter, was held to be insufficient: (*Harrington v. Metropolitan Railway Co.*, 13 L. T. N. S. 655.)

Leave to guardian to oppose bill. A guardian obtained leave to oppose a railway bill, unless the company inserted in it certain clauses for the compensation of his ward: (*Monypenny v. Monypenny*, 4 R. C. 226.)

Lessee. A lessee holding, subject to a proviso against assignment without the licence of the lessor, may agree for the sale of his interest, and is entitled to an assignment, without the concurrence of the lessor: (*Slipper v. Tottenham and Hampstead Junction Railway Co.*, L. R. 4 Eq. 112; 15 W. R. 861; 16 L. T. N. S. 446.)

"Part of a house," under s. 92. A person under disability may, it seems, oblige the company to take the whole of the "house," instead of part, under section 92 of the Lands Clauses Act, although a portion of the property so taken would not be within the limits of deviation: (*Governors of St Thomas's Hospital v. Charing Cross Railway Co.*, 1 J. & H. 400.)

Parties under disability to exercise other powers. VIII. The power hereinafter given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special act (a), or any act incorporated therewith, and the power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

(a) See ss. 95-98, *post*.

Amount of compensation in case of parties under disability to be ascertained by valuation, and paid into the bank (a). IX. The purchase-money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by

valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking and the other by the other party, and if such two surveyors (c) cannot agree in the valuation, then by such third surveyor as any two justices shall upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors if they agree, or if not then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase money or compensation shall be deposited in the bank for the benefit of the parties interested, in manner hereinafter mentioned.

(1) In some cases the enactments of this and some of the following sections have been considered by courts of equity to be merely directory in some cases.

(2) So where a valid contract under the 7th section had been entered into by a railway company with a tenant for life, but the company refused to appoint a surveyor under this section, the Master of the Rolls would not allow the contract to be set aside on that account, but directed a reference to chambers to ascertain whether the sum agreed upon was a reasonable and proper one under the Lands Clauses Act, and for an inquiry as to title: (*Baker v. Metropolitan Railway Co.*, 31 Bea. 504; 32 L. J. (Ch.) 7.) But in an appeal to Lord Westbury, C., in this case, his Lordship expressed some doubts as to the correctness of this decision, and whether the act ought not to be strictly followed in form. The case was subsequently settled: (31 Bea. 511 n.)

(3) In a later case, in which the valuation had been made by one surveyor acting for both parties, Sir W. P. Wood, V.-C., upon application for investment, refused to disturb the transaction, and merely required an affidavit from a surveyor, to be appointed by the petitioner, to satisfy the Court as to the sufficiency of the price: (*parte Rector of Adderley*, 10 L. T. N. S. 131. But see *Tillett v. Waring Cross Bridge Co.*, 26 Bea. 419; 28 L. J. (Ch.) 863, and *ibey v. Whitaker*, 4 Drew. 134.)

X. It shall be lawful for any person seised in fee of, or entitled to dispose of absolutely for his own benefit (a), lands authorised to be purchased for the purposes of the special act to sell and convey such lands or any part thereof to the promoters of the undertaking, in consideration of an annual rent-charge payable by the promoters of the undertaking, but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any charge done thereto, shall be in a gross sum.

(1) The 1st section of the Lands Clauses Consolidation Acts Amendment Act, 1860, (23 & 24 Vict. c. 106, *post*), repeals so much of the 1st section of the Lands Clauses Consolidation Act, 1845, as relates to the sale of lands absolutely entitled, lands may be sold on chief rents.

Alteration by Lands Clauses Acts Amendment Act, 1860, 23 & 24 Vict. c. 106, s. 1.

154 *Lands Clauses Consolidation Act, 1845, ss. 11, 12.*

- 8 & 9 VICT. c. 18. of this section as provides that, "save in the case of lands of which any person is seised in fee, or entitled to dispose absolutely for their * own benefit, the consideration to be paid for any lands, or for any damage done thereto, shall be in a gross sum;" and the 2d section of that act extends the power to sell and convey lands in consideration of an annual rent-charge, as provided by the 10th section of the Lands Clauses Consolidation Act, 1845, and the power to recover such rent-charge under the 11th section, to all cases of sale and purchase or compensation, under the last-mentioned act, where the parties interested in such sale, or entitled to such compensation, are under disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the amended act. And the amount of such rent-charge is to be ascertained in the manner directed with reference to compensation under the 9th section of the Lands Clauses Consolidation Act, 1845. See *post*, where the Lands Clauses Consolidation Acts Amendments Act, 1860, is printed at length.
8. 2.

Payment of rents to be charged on tolls.

XI. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress (a) of the goods and chattels of the promoters of the undertaking.

Right to distrain.

(a) A person entitled to a rent-charge under this section is entitled to have an order enabling him to distrain, notwithstanding the existence of a suit for the appointment of a receiver. The effect of the order was held not to decide his legal rights, but to prevent the appointment of a receiver in the suit, to which he was not a party, interfering with the exercise of such rights: (*Eyton v. Denbigh, Ruthin, and Corwen Railway Co.*, L. R. 6 Eq. 14.)

Power to purchase lands required for additional accommodation.

XII. In case the promoters of the undertaking shall be empowered by the special act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions hereinbefore contained, would be enabled to sell and convey lands, to sell and convey the lands so authorised to be purchased for extraordinary purposes.

(a) See s. 45 of the Railways Clauses Act, 1845, *post*.

XIII. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; but the total quantity of land to be held at any one time by the promoters of the undertaking for the purposes aforesaid shall not exceed the prescribed quantity.

8 & 9 VICT. c. 18.
Authority to sell
and re-purchase
such lands.

XIV. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes, purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands except under the powers of this and the special act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them.

Restraint on purchase from incapacitated persons.

XV. Nothing in this or the special act contained shall enable any municipal corporation to sell for the purposes of the special act, without the approbation of the commissioners of her Majesty's treasury of the united kingdom of *Great Britain and Ireland*, or any three of them, any lands which they could not have sold without such approbation before the passing of the special act, other than such lands as the company are by the powers of this or the special act empowered to purchase or take compulsorily.

Municipal corporations not to sell without the approbation of the treasury.

PURCHASE OF LANDS OTHERWISE THAN BY AGREEMENT: COMPULSORY POWERS.

And with respect to the purchase and taking of lands otherwise than by agreement (*a*), be it enacted as follows:

Purchase of lands otherwise than by agreement.

XVI. Where the undertaking is intended to be carried into effect (*b*) by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital or estimated sum for defraying the expenses of the under-

Capital to be subscribed before compulsory powers of purchase put in force.

8 & 9 VICT. c. 18. taking shall be subscribed (c) under contract binding the parties thereto, their heirs, executors, and administrators, for the payment of the several sums by them respectively subscribed, before it shall be lawful to put in force (d) any of the powers of this or the special act, or any act incorporated therewith, in relation to the compulsory taking of land for the purposes of the undertaking.

Trial of question of compensation in one of the Superior Courts.

(a) By the Regulation of Railways Act, 1868, (31 & 32 Vict. c. 119, s. 41,) (see *post*,) it is provided that whenever, in the case of any lands purchased or taken otherwise than by agreement for the purposes of any public railway, any question of compensation in respect thereof, or any question of compensation in respect of lands injuriously affected by the execution of the works of any public railway, is under the provisions of "The Lands Clauses Consolidation Act, 1845," to be settled by the verdict of a jury empanelled and summoned as in that act mentioned, the company or the party entitled to the compensation may, at any time before the issuing by the company to the sheriff, as by that act directed, apply to a judge of any one of the Superior Courts of Common Law at Westminster, who shall, if he think fit, make an order for trial of the question in one of the Superior Courts, upon such terms and in such manner as to him shall seem meet; and the question between the parties shall be stated in an issue, to be settled in case of difference by the judge, or as he shall direct, and such issue may be entered for trial, and tried accordingly, in the same manner as any issue joined in an ordinary action, at such place as the judge shall direct; and the proceedings in respect of such issue shall be under and subject to the control and jurisdiction of the Court, as in ordinary actions therein; but so nevertheless that the jury shall, where the issue relates to the value of lands to be purchased, and also to compensation claimed for injury done to lands held therewith, deliver their verdict separately, in manner provided by the 49th section of the Lands Clauses Consolidation Act, 1845.

s. 16 does not apply to a company in existence obtaining further powers.

(b) Where a company already in existence obtained a further act enabling them to make new works and raise further funds, which act incorporated the Lands Clauses and Railways Clauses Consolidation Acts, "save so far as the clauses and provisions thereof are expressly varied or excepted by this act," it was held that the 16th section did not apply, and that the company were not bound to show that the whole capital had been subscribed before putting their compulsory powers under their new act into force: (*Weld v. South-Western Railway Co.*, 32 Bea. 340; 33 L. J. (Ch.) 142.)

Whether a company may make only part of their line.

Whether, where it is evident that a line cannot be completed, the company can take compulsorily any part of the property through which the line would pass, see *Gray v. Liverpool and Bury Railway Co.*, 9 Bea. 391, 394; per Lord Eldon in *Blakemore v. Glamorganshire Canal Navigation*, 1 My. & K. 164; *Cohen v. Wilkinson*, 1 M.N. & G. 481; *Salmon v. Randall*, 3 My. & Cr. 439.

Capital not subscribed not a good return to a mandamus to make a branch line.

(c) It has been held that a return to a writ of mandamus to a railway company to make a branch authorised by an Extension Act, to the effect that the capital required to make the branch was not

subscribed for by any contract according to this section, and that s 9 VICT. c. 18. the branch could not be made without the exercise of the compulsory powers to take land, is not a good return, as it shows no incapacity to obey the writ: *Reg. v. Great Western Railway Co.*, 1 E. & B. 253.; which case also decided that this section is inapplicable to the case of an Extension Act where the funds are to be furnished by the company.

Section inapplicable where funds are to be furnished by the company.

But a return to a mandamus to a railway company to complete their line, that the undertaking was one to be carried into effect by means of capital to be subscribed by the promoters, that it had not been subscribed for under a contract pursuant to this section, and that the defendants could not at any time procure it to be so subscribed for, was good; as it showed that they were forbidden to exercise any compulsory powers by the section, and had not been, nor were then, in a situation to exercise them legally: (*Reg. v. Ambergate, &c., Railway Co.*, 1 E. & B. 372.)

Or by its promoters.

See with respect to the abandonment of railways and their dissolution, 13 & 14 Vict. c. 83, *post*, App.

(d) As to the question whether the fact that the capital which the act empowers the company to raise has not been raised to the full extent, affects the right of the company afterwards to prosecute the work, see *Thicknesse v. Lancaster Canal Co.*, 4 M. & W. 472.)

Right to make railway after failure to raise funds.

And as to the limitation of the time for the exercise by the company of their powers, see s. 123, *post*, and the notes thereon.

XVII. A certificate (a) under the hands of two justices, certifying that the whole of the prescribed sum has been subscribed, shall be sufficient evidence thereof, and on the application of the promoters of the undertaking, and the production of such evidence as such justices think proper and sufficient, such justices shall grant such certificate accordingly.

A certificate of two justices to be evidence that the capital has been subscribed.

(a) It seems that in the case of a company already established, who have obtained an act authorising the construction of a branch railway, the certificate required by this section would be dispensed with: (*Weld v. South-Western Railway Co.*, 32 Bea. 340; 33 L. J. (Ch.) 142.)

XVIII. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special act, or any act incorporated therewith, they are authorised to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this Act to sell and convey or release the same, or such of the said parties as shall after diligent inquiry be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and

Notice of intention to take lands (a).

8 & 9 Vict. c. 18. every such notice shall state the particulars of the lands so required (b), and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

Effect of notice to treat.
Lord St Leonard's opinion.

(a) What is the exact relation created between the railway company on the one hand, and the landowner on the other, in consequence of notice given under this section, has given rise to considerable discussion. In some cases it has been actually held that the notice to treat of itself establishes a binding contract between the parties; and this opinion seems to be held by Lord St Leonard, who, in his treatise on the Law of Vendors and Purchasers, says, in so many words: "The notice forms a binding contract, and creates the relation of vendor and purchaser. . . . The notice is a kind of inchoate or *quasi* purchase, and it places the landowner in the same position as if there had been a contract to purchase his land; he is placed in the position of a vendor, and he may compel the company to complete after the expiration of the prescribed period, and he is bound equally with the company, who may enter after the expiration of the term limited for compulsory purchase: (*V. & P.* 13th edit. p. 62; 14th edit. p. 79.) Some of the cases on this point, and amongst them some of those cited by Lord St Leonard himself, seem hardly to bear out to the full extent the principle which is laid down in the passage cited. It was, however, admitted in several cases that the service of the notice does constitute the relation of vendor and purchaser. Thus, in *Salmon v. Randall*, (3 My. & Cr. 439,) Lord Cottenham dissolved an injunction granted by the Vice-Chancellor to restrain certain Improvement Commissioners, who had served a notice to treat upon a landowner, from proceeding to summon a jury to assess the value of the property; and observed that, the notice being given, the act made it imperative that the jury should assess the value; that the parties were placed in the relation of vendor and purchaser, and that they must complete according to the terms of the act of Parliament.

It constitutes the relation of vendor and purchaser.

Salmon v. Randall.

Stone v. Commercial Railway Co.

Upon the same grounds the company cannot, on issuing the precept for a jury, include in it any property but that which was comprised in the notice to treat: (*Stone v. Commercial Railway Co.*, 4 My. & Cr. 122; 1 R. C. 401; 9 Sim. 621.)

Adams v. London and Blackwall Railway Co.

The extent to which Lord Cottenham was willing to carry this principle is explained in the following passage from his judgment in a subsequent case:—"It is, I think, quite true that, to a certain extent, and for certain purposes, the compulsory taking of land under the railway acts places the companies and the owners in the relative situation of vendors and purchasers; such as fixing, as between them, the land to be taken, which was all that was decided in *Stone v. The Commercial Railway Co.*; but it by no means follows that this Court will therefore take on itself the specific performance of such sales." His Lordship also thought that if the

proceedings led to an agreement, the Court might enforce specific performance; but considered it unnecessary in the case before him to go into the question whether that would be done where no price had been fixed: (*Adams v. London and Blackwall Railway Co.*, 6 R. C. 285.)

So it had been decided that, in consequence of the relation in which the parties stood after notice, a company could not give notice to determine the leasehold interest for which they had offered to treat without paying the purchase-money for that interest, notwithstanding that the leasehold was determinable: (*Doo v. London and Croydon Railway Co.*, 1 R. C. 257.)

In a case in which notice had been served to take part of the property, and after having been required to take the whole, the company desired to alter their plan by passing underneath the land by means of a tunnel, an injunction was granted on the ground that the notice had the effect of a contract, and therefore could not be receded from: (*Sparrow v. Oxford, &c., Railway Co.*, 9 Ha. 436; 2 De G. M. & G. 94; 21 L. J. (Ch.) 731.)

In *Haynes v. Haynes*, (1 Dr. & Sm. 426; 30 L. J. (Ch.) 578; 9 W. R. 497,) Sir R. Kindersley, V.-C., after an elaborate examination of the authorities bearing upon the point in question, came to the conclusion that the notice constitutes the relation of vendor and purchaser to a certain extent, and for certain purposes, (as Lord Cottenham had held in *Adams v. London and Blackwall Railway Co.*) and that some of the consequences which flow from an actual contract also follow upon a notice to treat; such as that the particular lands which the company are to take, and which the landowner must give up to the company after certain steps prescribed by the act shall have been taken, are fixed, and that neither party can get rid of the obligation—the one to take, and the other to give up, the lands specified in the notice. The Vice-Chancellor then expresses his opinion that, even if it were held that the notice does constitute a contract by the landowner to sell his land to the company, a court of equity will not decree specific performance of such a contract even on a bill by a landowner against the company.

It is true that, in one case, (*Walker v. Eastern Counties Railway Co.*, 6 Ha. 594; 5 R. C. 469,) it was held that the bare notice to treat constituted a contract, and specific performance of it was decreed. But in *Haynes v. Haynes*, this case was taken by the Vice-Chancellor to have been wrongly decided, his Honour having himself, in a previous case, refused, under similar circumstances, to grant a decree: (*Hill v. Great Northern Railway Co.*, 24 L. J. (Ch.) 212.)

It seems that the courts have been of one accord in holding that specific performance may be enforced when the general terms of the contract have been ascertained by the means provided by the act, such as the fixing of the price, or other decisive steps.

Thus, in a case which came before the House of Lords on appeal from Scotland, a notice had been given under the Scotch Lands Clauses Consolidation Act, and notice of claim sent in by the landowner. A jury was summoned within twenty-one days, but the ten days' notice of petition to the sheriff for the jury was omitted. The amount claimed was awarded, and Lord St Leonards said that the notice followed up by what took place made "as perfect a contract

5 & 9 Vict. c. 18.

Doo v. London
and Croydon
Railway Co.Sparrow v. Ox-
ford, &c., Rail-
way Co.Haynes v.
Haynes.Specific
performance.

Where decreed.

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8 & 9 Vict. c. 18. as could exist:" (*Edinburgh, &c., Railway Co. v. Leven*, 1 Macq. H. L. C. 284.)

Inge v. Birmingham, &c., Railway Co. In *Inge v. Birmingham, Wolverhampton, and Stour Valley Railway Co.*, (1 Sm. & Giff. 347; 3 De G. M. & G. 658,) notice to treat was served, a sum of £1500 was claimed, and possession was taken by the company; the landowner then served a notice requiring the company to summon a jury to assess the compensation; this the company refused to do, and an action for the £1500 was brought. Subsequently, upon a bill filed for specific performance, it was held that the notice alone did not constitute a contract, but that the subsequent conduct of the parties might amount to a contract, and that specific performance might be decreed.

Regent's Canal Co. v. Ware. Where notice was given under this section, and the price had been fixed by arbitration, specific performance was enforced at the suit of a company in preference to obliging them to proceed under their compulsory powers: (*Regent's Canal Co. v. Ware*, 23 Bea. 575; 26 L. J. (Ch.) 566.)

Nash v. Worcester Improvement Commissioners. So also where the jury had awarded a sum for compensation, and the commissioners, who had served the notice, never paid or invested any part of that sum, and pulled down certain of the premises, specific performance was decreed: (*Nash v. Worcester Improvement Commissioners*, 1 Jur. N. S. 973.)

Mason v. Stokes Bay, &c., Co. The case of *Regent's Canal Co. v. Ware* was expressly followed in *Mason v. Stokes Bay Pier and Harbour Co.*, (32 L. J. (Ch.) 110; 11 W. R. 80; 1 N. R. 84,) in which, no agreement having been come to as to the price, the amount was fixed by a surveyor and paid into the bank; the company entered, and the price was finally ascertained by arbitration.

Sale by auction after notice to treat restrained. Since neither party—the company who serve a notice to treat, nor the landowner upon whom it is served—can get rid of the obligation created by the notice, the Court of Chancery will restrain a sale by auction advertised by the landowner, after such notice has been served upon him: (*Metropolitan Railway Co. v. Woodhouse*, 11 Jur. N. S. 296; 34 L. J. (Ch.) 297; 13 W. R. 516; 12 L. T. N. S. 113.) The Court in this case refused to give the costs, because the solicitors of the company ought to have given notice that a bill would be filed if the defendant proceeded to a sale.

Costs. Whether the service of notice under this section will effect a conversion of the land, so as to make the purchase-money, when ascertained, subject to the laws of personal property, or whether the money would be taken by the heir-at-law as land, is a question which has given rise to several cases in equity, the result of which seems to be that if the contract be complete so as to be binding in equity according to the principles above enunciated, a conversion will take place, but not otherwise.

Ex parte Hawkins. The Common Council of the city of London, in exercise of certain compulsory powers entrusted to them, served a notice upon a landowner. The purchase-money was agreed upon, and the abstract was sent in. The owner died, having devised his real estate and his residuary estate to different persons. It was held that a conversion had been effected: (*Ex parte Hawkins*, 13 Sim. 569.)

Galliers v. Allen. In *Galliers v. Allen*, (reported in a note in 13 Sim. p. 577,) the land taken belonged to a person who, on dying, devised his estate

the last case. A conversion was held to have taken place. In *s & 9 Vict. c. 18. v. Haynes*, (1 Dr. & Sm. 460,) it is said that in *Galliers v.* the price had been assessed by a jury, but this does not appear from the note of the case referred to.

Haynes v. Haynes, (*utisupra*.) Vice-Chancellor Kindersley decided as the notice to treat (beyond which nothing had been done in case) did not constitute a contract, no conversion had taken place. In a case in which the purchase-money of property belonging to a person of unsound mind, (not so found by inquisition,) nothing but service of the notice having been done before his death, property was not considered to have been converted: (*Midland Railway Co. v. Owen*, 3 R. C. 497.)

Where the owner died after the date of the award, a conversion was deemed to have been effected: (*Re Wootton's Trusts*, 1 N. D. 3; 7 L. T. N. S. 620.)

Righton v. Righton, (1 W. N. 360; 36 L. J. (Ch.) 61,) the owner died, having specifically devised it. Notice had, previously to his death, been given, but the purchase-money had not been ascertained. It was held that there was no conversion, since there was no act which could have been specifically enforced independently of the Lands Clauses Act; and it was also held that the fact of the owner having entered into possession did not affect the matter.

Where mere making of an offer to sell land after notice to treat has been served, does not constitute a binding contract to sell, and, therefore, if the person making such offer die before the acceptance of the offer, there is no conversion of the property: (*Ex parte* *Ed. & J. N. S. 883*; 11 W. R. 793; 8 L. T. N. S. 623.)

The company have a right to give a second notice for more land, if necessary for the construction of the railway, and if the land is within the limits of deviation: (*Stamps v. Birmingham, Worcester, and Stour Valley Railway Co.*, 7 Hare, 251; 2 Ph. 673; C. 123.)

Where a notice had been given for part of some property, it is held that the compulsory powers were not exhausted, and that a second notice to take the whole for the purpose of erecting a station, authorised by the special act was valid: (*Simpson v. Lancaster & Carlisle Railway Co.*, 15 Sim. 580; 4 R. C. 625.)

On a similar ground, a fresh notice given by a railway company, after the passing of an Act extending the Act under which the former notice was given, was held to be good: (*Williams v. South Wales Railway Co.*, 3 De G. & Sm. 354; 13 Jur. 443.)

Notice under this section is irrevocable, and is not to be rescinded, if the company have subsequently found a method of proceeding without taking the land in respect of which the notice was given: (*Worcester v. Oxford, Worcester, and Wolverhampton Railway Co.*, 2 L. M. & G. 94, 108, 110; 21 L. J. (Ch.) 731.)

An injunction will be granted if the company attempt to take less than all the land comprised in the notice: (*Barker v. North Staffordshire Railway Co.*, 2 De G. & Sm. 55; 5 R. C. 401, 417; see also *Wey v. Lynn and Ely Railway Co.*, 4 R. C. 615.)

The precept to the sheriff for a jury must extend only to the land included in the original notice: (*Stone v. Commercial Railway Co.*, 1 My. & Cr. 122; 1 R. C. 401; 9 Sim. 621.)

No conversion by service of notice without more.

Secut. if owner dies after award.

Specific devise of land after notice, but before price fixed: no conversion;

Nor upon offer to sell after notice.

Notice for more land.

Second notice for other part of same property valid.

Fresh notice under Extension Acts.

Notice is irrevocable.

Company cannot take less than the land comprised in the notice;

Nor more land than that comprised in the notice;

- s. & 9 Vict. c. 18. But where a notice indicated, by a plan and schedule, lands which, upon the deposited plans were shown to be without the limits of deviation, an injunction was granted to restrain the taking of any of the land comprised in the notice: (*Wrigley v. Lancashire and Yorkshire Railway Co.*, 9 Jur. N. S. 710; 8 L. T. N. S. 267.)
- Nor land without the limits of deviation. In a recent case, it was contended that a notice under this section was equivalent to a notice requiring possession under section 121; but the Court of Queen's Bench decided that it was not so: (*Reg. v. Stone*, L. R. 1 Q. B. 529; 14 W. R. 791; 35 L. J. M. C. 208; 14 L. T. N. S. 552.)
- Notice to treat is not equivalent to notice under s. 121. Notice under this section is not destroyed, but merely suspended, by the service of a counter-notice requiring the company, under s. 92, to take the whole, instead of part of the premises: (*Pinchin v. London and Blackwall Railway Co.*, 1 K. & J. 34; 5 De G. M. & G. 851; see *post*, the notes to s. 92.)
- Effect of a counter-notice under s. 92. It is therefore unnecessary, under those circumstances, for the company to give a second notice before summoning a jury, under s. 21 of the Lands Clauses Act: (*Schwinge v. London and Blackwall Railway Co.*, 3 Sm. & Giff. 30; 24 L. J. (Ch.) 405.)
- No second notice for a jury under s. 21, in such cases. A company served a notice to treat, and then entered under s. 85. An agreement made by them before the passing of the act was considered to have been waived, and a decree for specific performance of it was refused: (*Bedford and Cambridge Railway Co. v. Stanley*, 2 J. & H. 746; 32 L. J. (Ch.) 60; 9 Jur. N. S. 152.)
- Subsequent exercise of compulsory powers construed as waiver of agreement. After notice has been duly given by the company, if it is a good notice, the owner can immediately apply for a mandamus, compelling the company to proceed, and he cannot therefore complain of delay: (*Pinchin v. Blackwall Railway Co.*, 1 K. & J. 34; 5 De G. M. & G. 851; 24 L. J. (Ch.) 417.)
- Mandamus in case of delay on part of company. But in another case, where great delay had taken place, without any action being taken by the company upon the notice, they were considered to have abandoned it: (*Hedges v. Metropolitan Railway Co.*, 28 Bea. 109.)
- Abandonment of notice. Where it appears that the company have taken land from a person who was not the real owner, the remedy is not by injunction, but by ejectment: (*Webster v. South-Eastern Railway Co.*, 1 Sim. N. S. 272; 6 R. C. 698.)
- Land wrongfully taken. Ejectment. So where a railway had been completed upon land obtained from a tenant of the plaintiff by fraud, an injunction to stop the working of the line was refused: (*Deere v. Guest*, 1 My. & Cr. 516.)
- Land acquired by fraud. And in another case, a company were not enjoined in equity, in consequence of their having erected works upon land not within the notice to treat, but of which they had taken possession: (*Lind v. Isle of Wight Ferry Co.*, 1 N. R. 13.)
- Notice not necessary to be under seal of company. It seems that neither the notice nor an agreement to settle the price need be under the seal of the company: (*Smith v. Dublin and Bray Railway Co.*, 3 Ir. Ch. Rep. 225.)
- An award, including severed lands, as well as the principal property taken, held bad. Where certain landowners included in the schedule to their claim for compensation certain small pieces of severed land, such as the company would have to take under s. 93, an award assessing the compensation in respect of the principal land, and also of the severed portion, was held to be invalid: (*In re North Staffordshire Railway Co. v. Wood*, 2 Exch. 244; 6 R. C. 25.)

An agreement that one fixed sum shall represent the price of the land, and also consequential damage, is not open to objection : (See *Webb v. Direct London and Portsmouth Railway Co.*, 9 Ha. 129.)

Although the owner is entitled to full particulars as to what lands are required, still where a plan annexed to the notice bore no scale of admeasurement, that was not a ground for holding that the notice was insufficient : (*Sims v. Commercial Railway Co.*, 1 R. C. 431.)

As to the power of railway companies to proceed after the time limited for the exercise of their compulsory powers, upon notice given under this section before such expiration, see *R. v. Hungerford Market Co.*, 4 B. & A. 327 ; *R. v. Birmingham Railway Co.*, 15 Q. B. 634 ; 6 R. C. 628 ; 19 L. J. (Q. B.) 453 ; *Steel v. Mayor, &c., of Liverpool*, 14 W. R. 311 ; and the notes to s. 123, *post*.

A variance in the description of lands in the notice to treat is an irregularity merely, and is waived by appearing before a jury summoned to assess compensation, and proceeding in the trial after objection taken and overruled : (*Ex parte Crawshaw Baily*, 1 B. C. C. 66.)

See *Earl of Harborough v. Shardlow*, 2 R. C. 253, 257.

XIX. All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode, if any such can after diligent inquiry be found, and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

XX. If any such party be a corporation aggregate, such notice shall be left at the principal office of business of such corporation, or, if no such office can after diligent inquiry be found, shall be served on some principal member (a), if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

(a) Service of a notice to nominate a special jury was directed by the act to be made upon a company at their place of business, but it was effected upon a person whom the company recognised as their attorney, and whose act in respect of such service it adopted, and such service was held valid to support subsequent proceedings taken upon the service of the writ : (*Reg. v. Maryport and Carlisle Railway Co.*, 15 L. T. 134.)

XXI. If for twenty-one days after the service of such notice any such party shall fail to state the particulars of

One sum for compensation and damage.
Plan annexed to notice.

Proceeding on notice after expiration of compulsory powers.

Variance in description of lands in notice to treat.

Service of notices on owners and occupiers of lands.

Service of notice on a corporation aggregate.

Service of notice upon attorney of company.

If parties fail to treat, or in case of dispute, ques-

8 & 9 Vict. c. 18.
tion to be settled
as after men-
tioned.

his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands (a) belonging to such party, or which he is by this or the special act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

Questions of disputed compensation may now, by the Regulation of Railways Act, 1868, (31 & 32 Vict. c. 119, see *post*,) s. 41, be tried under a judge's order, directing an issue in the same manner as in ordinary actions at law.

Arbitration or a
jury can affect
only land in
notice to treat.

(a) The compulsory powers of settling compensation by arbitration or by a jury must be exercised for no more and no less land than that in respect of which the notice to treat was given: (*Stone v. Commercial Railway Co.*, 4 My. & Cr. 122; 9 Sim. 621; 1 R. C. 401.)

Disputes as to
compensation
where the
amount claimed
does not exceed
£50 to be settled
by two justices.

XXII. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this act enabled to sell and convey or release any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed fifty pounds, the same shall be settled by two justices (a).

Disqualification
of justices.

As to disqualification of justices, see note to s. 3 of the Railway Clauses Act.

As to the mode of enforcing the order of the justices, see 8 & 9 Vict. c. 20, ss. 44 and 140, *post*.

(a) It was decided in the case of *Re Edmundson*, (17 Q. B. 67,) that the 11th section of statute 11 & 12 Vict. c. 43, applies to the case of an adjudication by two justices under this act, and that an order is bad under that section, if the complaint on which the order is founded be made more than six months after the cause of complaint arose; and that such order may be brought up by *certiorari* to be quashed. See also *Reg. v. Leeds and Bradford Railway Co.*, 18 Q. B. 343; and see *post*, note to s. 121.

Compensation
exceeding £50
to be settled by
arbitration or

XXIII. If the compensation claimed or offered in any such case shall exceed fifty pounds, and if the party claiming compensation desire to have the same settled by arbi-

tration, and signify (a) such desire by notice in writing to the promoters of the undertaking, before they have issued their warrant (b) to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration (c), or if, when the matter shall have been referred to arbitration, the arbitrators or their umpire shall for three months (d) have failed to make their or his award, or if no final award shall be made (e), the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided.

8 & 9 Vict. c. 18.
jury, at the
option of the
party claiming
compensation.

See s. 41 of 31 & 32 Vict. c. 119, whereby cases of disputed compensation may be tried under an issue directed by a judge's order as an ordinary action. See the Act, *post*.

(a) It is to be observed that "these arbitration clauses being introduced for the benefit of the parties, they are at liberty to renounce at their pleasure the advantages they afford," (*per* Mellor, J., in *Palmer v. Metropolitan Railway Co.*, 31 L. J. (Q. B.) 259; 10 W. R. 714;) when, therefore, the parties to a reference under these sections consent to enlarge the time for making the award beyond the statutory term of three months, the award will not be set aside on the ground that it is made beyond the prescribed time, and that the parties cannot dispense with the provisions of the statute: (*Ibid.*)

Parties may elect
to proceed under
this section.

As to the notice required, see note to s. 68, *post*. This section has been held to apply to a case of reference to arbitration under section 68, of the amount of compensation in respect of land already taken or injuriously affected: (*Evans v. Lancashire and Yorkshire Railway Co.*, 1 E. & B. 754; 22 L. J. (Q. B.) 254;) in which case an action brought as an award made by the arbitrator more than three months after his appointment was held not to lie.

This section ap-
plies to a refer-
ence under s. 68.

(b) A mandamus was granted in the case of *Ex parte Senior*, 7 D. & L. 36, to compel a company to issue their warrant to summon a jury to assess compensation, where proceedings by arbitration under this and the following sections had proved abortive, in consequence of the non-appointment of an umpire within the time limited—the owner not being bound to proceed even under the 68th section.

Mandamus to
issue a warrant
for a jury where
arbitration
proves abortive.

It has been decided that the owner of property acquired does not lose his right to have the value assessed by a jury under this section because he has made no claim, and because the company have proceeded under section 85. They must have actually paid or tendered the money, or the owner may claim to proceed under this section: (*Reg. v. Metropolitan Railway Co.*, 13 L. T. N. S. 444.)

Owner entitled
to proceed under
this section, al-
though his land
has been taken
under s. 85.

(c) Where the award proceeded upon the footing that certain

Variation in
works after
award.

s. 49 VICT. c. 18. roads would not be diverted, and that two bridges would have to be made in consequence, it was held that the award did not prevent the company from modifying their plans, within the limits of deviation, so as to necessitate the construction of one bridge only, subject to the necessity of making further compensation to the claimant, according to s. 16 of the Railways Clauses Act: (*Selby v. Colne Valley and Halstead Railway Co.*, 6 L. T. N. S. 709; 10 W. R. 661.)

This case follows *Wood v. North Staffordshire Railway Co.* (1 M.N. & G. 278), in which Lord Cottenham, in dissolving an injunction granted by Sir J. L. K. Bruce, V.-C., observed that there had been performance of the letter of the contract of reference, and if substituted road was not so convenient a mode of communicating with the plaintiff's premises as that which was awarded, that was an injury not provided for by the contract, but a case under section 16 of the Railways Clauses Act, whereby all damage to roads, &c., is the subject of compensation.

Award need not state means of making accommodation works.

And an award is not invalid, because it omits to settle the means of making proper communications, archways, drains, &c., for which the Railways Clauses Act expressly provides: (*Skerratt v. North Staffordshire Railway Co.*, 2 Ph. 475; 5 R. C. 166; 17 L. J. (Ch.) 161.)

Award notwithstanding agreement.

Nor will the award be set aside in consequence of an agreement concerning the land, the subject of the award, having been entered into, unless proper steps to upset it have been taken; and, the purchaser having been let into possession, the amount found by the arbitrators will be ordered to be paid into court, although it be shown that the agreement has not been performed by the vendor: (*South-Eastern Railway Co. v. London, Brighton, and South Coast Railway Co.*, 1 W. N. 130; 14 W. R. 666.)

Award or jury can assess value, but cannot decide on title.

It would seem that an arbitrator, or a jury, can only assess the value of the interest claimed, and cannot decide upon the right to such interest; therefore the right to money paid in under s. 76 must be ascertained by a court of equity, and if it is found that the claimant has not the interest which he claims, or has some other interest, the Court of Chancery, by reference to chambers, will find out the value of his real interest, and, if it be less than that claimed, will pay the actual value to the claimant, and the remainder of the amount deposited to the company: (See *Brandon v. Brandon*, 2 Dr. & Sm. 305; 13 W. R. 251; 5 N. R. 214.)

How time for making award is computed.

(d) The period of three months given by this section for the purpose of the award, is given by it also to an umpire appointed under s. 28; and the time commences to run from the time of the duty devolving upon him, and not from the time of his appointment. In *re Bradshaw v. East and West India Dock and Birmingham Railway Co.*, 12 Q. B. 562; 5 R. C. 527, following the case of *Skerratt v. North Staffordshire Railway Co.*, 2 Ph. 475, in which it was held that the three months allowed are computed from the appointment of the last arbitrator; but where an umpire has been appointed, and is called upon to act, he may make his award within three months of the time when that duty devolved upon him: (*Skerratt v. North Staffordshire Railway Co.*, 2 Ph. 475; 5 R. C. 166; 17 L. J. (Ch.) 161; and see *Evans v. Lancashire and Yorkshire Railway Co.*, 1 E. & B. 754; 22 L. J. (Q. B.) 254.)

(e) Where an arbitration fails, the proper method of proceeding is by mandamus to summon a jury under this section: (*Lind v. Isle of Wight Ferry Co.*, 1 N. R. 13.)

Mandamus in case of failure in arbitration.

Where it was declared in a submission to arbitration that the proceedings should be in strict accordance with the provisions of this and the Railway Clauses Act, and the arbitrator from time to time enlarged the time for making his award, and before it was made the claimant died, whereupon it was sought to set aside the award; it was held by the House of Lords that the submission did not expire at the death of the landowner; that the award was valid, though made after the statutable period; and that the arbitrator might employ an expert, and consult men of science: (*Caledonian Railway Co. v. Lockhart*, 3 Macq. 808; 6 Jur. N. S. 1311.)

Death of claimant before award made.

XXIV. It shall be lawful for any justice, upon the application of either party with respect to any question of disputed compensation by this or the special act, or any act incorporated therewith, authorised to be settled by two justices, to summon the other party to appear before two justices, at a time (a) and place to be named in the summons, and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, and the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof.

Method of proceeding for settling disputes as to compensation by justices.

(a) See *ex parte Edmundson*, 17 Q. B. 67, the notes to s. 22, *ante*, and *Reg. v. Leeds and Bradford Railway Co.*, (18 Q. B. 343,) deciding that section 11 of stat. 11 & 12 Vict. c. 43, is applicable to orders made upon complaints under this act, and is retrospective.

Time for making complaint and proceeding.

See also notes to s. 63, *post*.

XXV. When any question of disputed compensation (a) by this or the special act, or any act incorporated therewith, authorised or required to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party (b), on the request of the other party, shall nominate and appoint an arbitrator, to whom such dispute shall be referred; and every appointment of an arbitrator (c) shall be made on the part of the promoters of the undertaking under the hands of the said promoters or any two of them, or of their secretary (d) or clerk, and on the part of any other party under the hand of such party, or if such party be a cor-

Appointment of arbitrator when questions are to be determined by arbitration.

3 & 4 Vict. c. 18.

poration aggregate under the common seal of such corporation; and such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator (e), then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final (f).

One sum for compensation and damage.
For fee simple without allowing for tenancies.

(a) It is no objection to the validity of the award that it assesses one sum for damage and price, though separate claims for each be made; and where an award was made to a claimant in fee simple for one sum for the fee simple in possession and for compensation for severance, it was held to be sufficient as against him, though the premises were at the time under lease: (*In re Bradshaw*, 12 Q. B. 562; 5 R. C. 527.)

Remedy of tenants.

In this case it was also pointed out that the remedy of the tenants under such circumstances would be against the company. See also *Tew v. Harris*, 11 Q. B. 7.

Where several parties are interested in the land, the arbitrator should find what their interests are.

(b) But where trustees under a will served the company with a notice that they claimed an estate and interest in lands required by the company, and desired compensation to be assessed by arbitration, and an umpire was appointed, where another party claimed in respect of a limited interest, and the umpire awarded a sum to be paid by the company to the trustees, the award was held bad, as he had not found the nature of their interest in the lands, and awarded distinct compensation in respect of it. But the Court refused to set the award aside, leaving the company to dispute it when the parties should attempt to enforce it: (*North Staffordshire Railway Co. v. Landor*, 2 Exch. 235; 6 R. C. 17; see also *North Staffordshire Railway v. Wood*, 2 Exch. 244; 6 R. C. 25, ante, p. 162.)

Objections to arbitrator.

(c) Where, upon a reference the landowner objects to the company's arbitrator, as, for instance, that he is employed as surveyor to the company, he should not proceed with the reference, because that might be construed as a waiver of his objections: (*Re Ellis and the South Devon Railway Co.*, 2 De G. & Sm. 17.)

Although in strictness the surveyor of the company ought perhaps not to be appointed an arbitrator for them, still the Court would not set aside the award made by him as such arbitrator: *(Ibid.)*

8 & 9 VICT. c. 18.

Appointment of company's surveyor as arbitrator.

And the same rule applies where the company's arbitrator is interested as a proprietor or shareholder in the line: *(Ibid.)*

Arbitrator a shareholder in company.

(d) Where, in pursuance of the arbitration clauses of this act, both parties agree on the appointment of an arbitrator, there is no necessity for a perfect compliance with all the statutory forms; it is sufficient if the appointment on the part of the company be signed by the secretary: (*Per* Pollock, C. B., in *Collins v. South Staffordshire Railway*, 7 Exch. 5; 21 L. J. (Exch.) 247; and see note to s. 121, *post.*)

Appointment signed by secretary alone.

(e) The notification of the appointment must be express; and where B. had given notice to a railway company who had refused compensation that "it was his intention" to appoint M. as arbitrator, and that if they failed within fourteen days to appoint, he would appoint him to act for both parties, and M. did so act, the Court refused to enforce his award or to set it aside on motion: (*Bradley v. London and North-Western Railway Co.*, 5 Exch. 769; 20 L. J. (Exch.) 3.)

Neglect to appoint arbitrator.

(f) The Court of Chancery considers the award of an arbitrator finding the amount of damage done by a nuisance, as equivalent to a verdict at law, and consequently as a foundation for a legal right upon which an injunction may be granted: (*Imperial Gas Light and Coke Company v. Broadbent*, 26 L. J. (Ch.) 276; 7 De G. M. & G. 436; affirmed on appeal to the House of Lords, 7 H. L. Ca. 600; 29 L. J. (Ch.) 377.)

Effect of award.

Where a landowner had taken legal proceedings to set aside the award after refusing to deliver an abstract of his title, whereupon the company had paid into the bank the sum awarded, and entered into possession, a petition by the company to have it paid out to them was granted; the landowner being held not to be entitled to take the benefit of the deposit, and also to repudiate the proceedings upon which it was made: (*In re Fooks*, 2 M. & G. 357.)

Where landowner takes steps to set aside award after price paid in.

XXVI. If, before the matters so referred shall be determined, any arbitrator appointed by either party die, or become incapable, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

Vacancy of arbitrator to be supplied.

XXVII. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter

Appointment of umpire.

8 & 9 Vict. c. 18. upon the matters referred to them, nominate and appoint by writing under their hands, an umpire (a) to decide on any such matters on which they shall differ (b), or which shall be referred to him under the provisions of this or the special act, and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him shall be final.

Arbitrator may consult umpire.

(a) It seems that the arbitrators may, without impropriety, privately consult the umpire before the time when the duties of the latter arise: (*Skerratt v. North Staffordshire Railway Co.*, 5 R. C. 177; 2 Ph. 475; 17 L. J. (Ch.) 161.)

Umpire acting before proper time.

(b) An umpire may sometimes, and under certain circumstances, join with the arbitrator before the time for his acting has arrived: (*In re Elliot*, 2 De G. & Sm. 17.)

Umpire need not have special knowledge.

The fact that the umpire is a person of individual skill and experience in the matter in hand is immaterial: (*In re Hawley and North Staffordshire Railway Co.*, 2 De G. & Sm. 33.)

Board of Trade empowered to appoint an umpire on neglect of the arbitrators, in case of railway companies.

XXVIII. If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, the Board of Trade (a), in any case in which a railway company shall be one party to the arbitration, and two justices in any other case, shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special act, shall be final (b).

(a) See the Regulation of Railways Act, 1868, (31 & 32 Vict. c. 119, *post*), ss. 30-33, as to cases in which the Board of Trade are required to make any award, or decide any difference in cases in which a company is one of the parties.

Appointment by Board of Trade.

Where a company and the claimant appointed two arbitrators who made no award, nor appointed any umpire under s. 27, within twenty-one days after the last appointment, after which time the Board of Trade appointed an umpire, who made his award within three months of his appointment, it was held that the appointment was valid, and the award made in time, within s. 23.

Appointment not under seal.

Where under this section a railway company appointed an umpire, not under seal, by a document not signed by the person describing himself as secretary, the umpire not exercising in his award his power given him by this act respecting costs, the Court discharged a rule obtained to set his award aside, thinking the objections too doubtful to be determined on motion: (*Wilts and Weymouth Railway Co. v. Fooks*, 3 Exch. 728;) in which case the question was raised, but undecided, whether under 5 & 6 Vict. c. 55, s. 19, the appointment

of an umpire must be taken as conclusively proved by the production of such a document. s & 9 Vict. c. 18.

As to estoppel by conduct on part of claimant, from objection to want of authority in the umpire, see *Palmer v. Metropolitan Railway Co.*, 31 L. J. (Q. B.) 259; 10 W. R. 714.

By the 14 & 15 Vict. c. 105, the powers transferred by the 9 & 10 Vict. c. 105, to the Railway Commissioners, were retransferred to the Board of Trade. Powers of Board of Trade.

(b) As to the control of the Courts over awards, see *Re Stroud*, 8 C. B. 502. Finality of award.

XXIX. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration under the provisions of this or the special act in the same manner as if such arbitrator had not been appointed. In case of death of single arbitrator the matter to begin de novo.

XXX. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse or for seven days neglect to act the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties (a). If either arbitrator refuse to act the other to proceed ex parte.

(a) See *Willoughby v. Willoughby*, 9 Q. B. 923.

XXXI. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid. If arbitrators fail to make their award within twenty-one days to the umpire.

XXXII. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose (a). Power of arbitrators to call for books, &c.

(a) In a case where, after one sitting, one of the arbitrators absented himself, and the other arbitrator proceeded in the matter together with the umpire, but ultimately the award was made by Duties of umpire as to hearing evidence.

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8 & 9 Vict. c. 18. the umpire alone, without hearing the evidence on the part of the company, (the solicitor to the company, who protested against the proceedings, not having adduced any evidence,) it was held that the award was invalid, because the umpire had, from the circumstances, no right to presume that the company had no evidence to adduce; and that he should have taken up the case from the point at which it had been left by the two arbitrators, when acting in concert: (*In re Hawley and the North Staffordshire Railway Co.*, 2 De G. & Sm. 33.)

Arbitrator or umpire to make a declaration.

XXXIII. Before (a) any arbitrator or umpire shall enter into the consideration of any matters referred to him he shall in the presence of a justice make and subscribe the following declaration; that is to say,

‘I, A. B., do solemnly and sincerely declare, That I will
‘faithfully and honestly, and to the best of my skill and
‘ability, hear and determine the matters referred to me
‘under the provisions of the act [*naming the special*
‘act.] A. B.

‘Made and subscribed in the presence of

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanour.

Time of making declaration.

“Justices.”

(a) See as to the time of making this declaration, *Re Bradshaw's Arbitration*, 12 Q. B. 562; 5 R. C. 527; 17 L. J. (Q. B.) 362. The limitation given by s. 3 of this act to the word “justices” does not apply to this section: (*Davies v. South Staffordshire Railway Co.*, 2 L. M. & P. 599.)

Costs of arbitration, how to be borne.

XXXIV. All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators, shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions (a).

Section not apply to costs of agreement to refer instead of going to a jury.

Right to costs to be included in award.

(a) The provisions of the act with respect to costs do not apply to the case of an agreement to submit to arbitration, instead of taking the verdict of a jury: (*Per Coleridge, J., Ex parte Reynal*, 5 R. C. 60.)

It is the duty of the umpire under this section to ascertain whether the claimant's right to costs arises, and to include them in his award, if it exists: (*London and North-Western Railway Co. v. Quick*, 5 D. & L. 685; 5 R. C. 520,) which case also decided that he

must settle the costs of the claimant by the same instrument as the costs of the arbitrators, and both by the award; and that he has no power to grant a subsequent certificate for them. This latter part of the judgment of Erle, C. J., seems to be overruled by the later case of *Gould v. Staffordshire Potteries Co.*, 5 Exch. 214; 6 R. C. 568, which decided that the settlement of costs need not be within three months after the time of the reference; and where it was held that the word "arbitrators" in this section means the persons who make the award, either as arbitrator or umpire.

Under this clause an arbitrator is not obliged to condemn the company in the costs of the arbitration, where he disallows the claim, and the company have made no offer in respect of it; nor if there be some claims disallowed, joined with other distinct claims allowed, are they to bear the costs of the arbitration and those incidental to it: (*In re Mills v. Midland Railway Co.*, 16 Jur. 640.)

By the Railway Companies Act, 1867, s. 37, the costs of and incidental to the arbitration and award shall, if either party so requires, be settled, as between the parties, by one of the Masters of the Court of Queen's Bench.

An application for the investment of a sum awarded as compensation for materials taken from the applicant's land was held to preclude him from asking for any costs, other than those included in and allowed by the award: (*Ex parte Harrison*, 13 Jur. 381.)

A tenant for life who demanded an arbitration, the result of which was an award giving a less sum than that contained in the company's offer to purchase, was held entitled to his costs of the arbitration: (*In re Aubrey*, 17 Jur. 874.)

After the dismissal of a bill by a company against an individual who had claimed compensation under s. 68, the defendant having leave to apply for costs if he could establish his right to compensation, an arbitration was resorted to, but neither party took up the award. The Master of the Rolls held that, as to the question of costs, the defendant was premature, and that the Court had no jurisdiction to compel the taking up of an award, the remedy being by mandamus: (*Sutton Harbour Co. v. Hitchens*, 16 Bea. 381.)

XXXV. The arbitrators shall deliver their award in writing to the promoters of the undertaking, and the said promoters shall retain the same (b), and shall forthwith, on demand, at their own expense, furnish a copy (c) thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

(a) There is nothing in the act to affect the arbitrator's common law right of lien on the award for his fees, and he is not bound to deliver it without payment of them; (b) but, on the contrary, in case of the refusal of the company to take it up, a writ of mandamus will issue to them to take it up and pay the fees: (*In re Bailey v. South Devon Railway Co.*, 13 L. T. 233;) (c) and a mandamus will also lie to compel them to furnish a copy of the award forthwith to

s & 9 Vict. c. 18.

Arbitrator not bound to allow the claimants the costs of the arbitration if claim fail.

Settlement of costs by Master. 30 & 31 Vict. c. 127, s. 37.

Costs on petition for payment out of sum awarded.

Costs of tenant for life.

Sutton Harbour Co. v. Hitchens.

Award to be delivered to the promoters of the undertaking (a).

Arbitrator's lien on award for his fees.

Mandamus to a company to take up award.

And to furnish a copy of award to claimant.

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8 & 9 VICT. c. 18. the person claiming compensation : (*Reg. v. South Devon Railway Co.*, 20 L. J. (Q. B.) 145 ; 15 Q. B. 1043.)

Irregular notice under s. 68. In showing cause against a rule *nisi* for a mandamus, the defendants will not be allowed to show that there were defects in the notice required under ss. 23, 68 : (*Reg. v. Sutton Harbour Commissioners*, 2 W. R. 10.)

No jurisdiction in Chancery to compel parties to take up award. The Court of Chancery has no jurisdiction to compel either party to take up an award ; the proper mode of proceeding is by mandamus : (*Sutton Harbour Co. v. Hitchens*, 16 Bea. 381. See note on s. 34.)

Statement by arbitrator of reasons for award. Where an arbitrator stated his reasons for his award on a separate paper, the Court refused to look at the statements as a ground for impeaching the award, as it could not be shown that he delivered them as part of it : (*Reg. v. South-Western Railway Co.*, 20 L. T. 110.)

But see *In re Dare Valley Railway Co.*, 3 W. N. 216, and the notes to s. 68, *post*.

Finality of award. No objection to the award can be taken on a rule to set it aside on the ground that it was contrary to the evidence : (*Re Bradshaw*, 17 L. J. (Q. B.) 362 ; 5 R. C. 527 ; 12 Q. B. 562.)

Submission may be made a rule of Court. XXXVI. The submission to any such arbitration may be made a rule of any of the superior courts (a), on the application of either of the parties.

Order *nisi* to set aside award. The Court of Chancery will upon an *ex parte* application make an order *nisi* to set aside an award : (*Re Elliot*, 2 De G. & Sim. 17.)

Form of order. The form of such an order is set out, *Ibid.* p. 23.

Submission may be made a rule in Chancery. And the submission may be made a rule of the Court of Chancery : (*Ibid.*)

An appointment of arbitration having been made under s. 25, the Court of Chancery at first refused to order the production of it in order to enable the registrar to draw up an order making the submission a rule of Court. But upon a second motion the order was granted, as the landowners had filed an affidavit stating that the appointment was duly made : (*In re Hawley and the North Staffordshire Railway Co.*, 2 De G. & S. 33.)

The award and appointment of umpire need not be made a rule of Court. If the submission to arbitration be made a rule of Court, it is no objection, on motion to set aside the award, that neither it nor the appointment of the umpire was made a rule of Court : (*In re Bradshaw*, 12 Q. B. 562 ; 5 R. C. 527. See *Midland Railway Co. v. Heming*, 4 D. & L. 788.)

Award not void through error in form. XXXVII. No award made with respect to any question referred to arbitration under the provisions of this or the special act shall be set aside for irregularity or error in matter of form (a).

(a) Where an arbitrator awarded contingent and prospective damages in assessing the value of land acquired by a railway, and in the compensation included such damage as was likely to be caused to the landowner's tenants, the award was held by the House of Lords not to be thereby invalidated : (*Caledonian Railway Co. v. Lockhart*, 3 Macq. 808 ; 6 Jur. N. S. 1311.)

Assessment of damage to tenants in award as to value.

For further objections to the form of the award, see s. 63, *post*, 8 & 9 VICT c. 18. and the judgments of Williams, and Willes, J. J., *Re Duke of Beaufort*, 8 C. B. N. S. 146; 29 L. J. (C. P.) 241.

Where the award omits an item of compensation through error in legal principle, and in regard to the subject-matter of the reference, the matters will be remitted back. See *In re Dare Valley Railway Co.*, 3 W. N. 216.

XXXVIII. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation, they shall give not less than ten days notice (b) to the other party of their intention to cause such jury to be summoned, and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works.

Promoters of the undertaking to give notice before summoning a jury (a).

(a) This section is to be considered as incorporated with the 68th, *post* : (*Richardson v. South-Eastern Railway Co.*, 20 L. J. (C. P.) 236; 11 C. B. 154; 15 Jur. 660; and see also *Railstone v. York and Berwick Railway Co.*, 19 L. J. (Q. B.) 464; 15 Q. B. 404.)

(b) If a company desires that notice should be served at its office and not upon its solicitors, it must state so clearly and at once; and no objection can be taken to an award if it fails to do so, on the ground of irregularity of notice: (See *Blackburn, J., Reg. v. Metropolitan Railway Co., ex parte Knock*, 17 L. T. N. S. 291.)

Place of service of notice to be stated.

XXXIX. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury, the promoters of the undertaking shall issue their warrant (a) to the sheriff (b), requiring him to summon a jury for that purpose, and such warrant shall be under the common seal of the promoters of the undertaking, if they be a corporation, or if they be not a corporation, under the hands and seals of such promoters, or any two of them; and (c) if such sheriff be interested in the matter in dispute, such application shall be made to some coroner of the county in which the lands in question, or some part thereof, shall be situate; and if all the coroners of such county be so interested, such application may be made to some person having filled the office of sheriff or coroner in such county, and who shall be then living there, and who shall not be interested in the matter in dispute, and with respect to the persons last mentioned

Warrant for summoning jury to be addressed to the sheriff.

8 & 9 Vict. c. 18. to all intents and purposes whatsoever, to be the acts and deeds of the coroner by whom such appointment was made," (6 & 7 Vict. c. 83, s. 1.) A duplicate of such appointment must be forthwith transmitted to the clerk of the peace for the county, city, &c., in which the coroner resides; and the appointment may at any time be revoked by the coroner, (*Ibid.*) No deputy is to act for any coroner as aforesaid, "except during the illness of the said coroner, or during his absence from any lawful or reasonable cause," (*Ibid.*) That the coroner was engaged in holding another inquest was held a sufficient cause for the appointment of a deputy under this section: (*Reg. v. Perkin*, 7 Q. B. 165; 9 Jur. 686.)

Coroner's remuneration.

With respect to the coroner's remuneration, s. 22 of 7 & 8 Vict. c. 92 enacts, "that in all cases where any writ, process, or extent whatsoever shall be directed to and executed by any coroner or coroners in the place or stead of any sheriff or sheriffs, such coroner or coroners shall have and receive such and the same poundage fees or other compensation or reward for executing the same as the sheriff or sheriffs, if he or they had executed the same, would have been entitled to receive for so doing, and shall also have such and the same right to retain, and all other remedies for the recovery of the same, as the sheriff or sheriffs would have had in whose place and stead such coroner or coroners shall have been substituted; and if the fees or compensation payable to the sheriffs shall at any time after the passing of this act be increased by act of Parliament or otherwise, that in every such case the coroner or coroners shall be entitled to such increased fees or compensation."

How deputy should sign.

The inquisition should not be signed by the deputy in his own name, but in that of the officer for whom he acts: (*Stroud v. Watts*, 3 D. & L. 799; *R. v. Perkin*, 7 Q. B. 165.)

Jury to be summoned.

XXI. Upon the receipt of such warrant, the sheriff shall summon a jury of twenty-four indifferent persons duly qualified (a) to act as common jurymen in the Superior Courts, to meet at a convenient time and place to be appointed by him for that purpose, such time not being less than fourteen nor more than twenty-one days after the receipt of such warrant, and such place not being more than eight miles distant from the lands in question, unless by consent of the parties interested, and he shall forthwith give notice to the promoters of the works of the time and place so appointed by him.

Qualification of jurors.

(a) If some of the jurymen who have acted have not been duly qualified to act as such, the Court will not set aside the verdict on the ground of their non-qualification. The remedy in such a case is by challenge. *In re The Chelsea Waterworks Co., Ex parte Phillips*, 10 Exch. 731; 24 L. J. (Ex.) 79; 3 W. R. 174; 24 L. T. 223.

Jury to be impanelled.

XLII. Out of the jurors appearing upon such summons a jury of twelve persons shall be drawn by the sheriff, in such manner as juries for trials of issues joined in the

Superior Courts are by law required to be drawn, and if a sufficient number of jurymen do not appear in obedience to such summons the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid; and all parties concerned may have their lawful challenges against any of the jurymen, but no such party shall challenge the array (a).

(a) A challenge to the array is an objection to all the jurors returned by the sheriff, collectively, (Co. Lit. 155, 158,) not for any defect in them, but for some partiality or default in the sheriff, or his under-officer, who arrayed the panel, (3 Bl. Com. 359.) From this is distinguished a challenge to the polls, which is an exception to one or more of the jurors individually who have appeared.

XLIII. The sheriff shall preside on the said inquiry, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law (a); and if either party so request in writing, the sheriff shall summon before him any person considered necessary to be examined as a witness touching the matters in question, and on the like request the sheriff shall order the jury, or any six or more of them, to view the place (b) or matter in controversy, in like manner as views may be had in the trial of actions in the superior courts.

(a) Lord Denman, C. J., says of a similar provision in an act of Will. IV., that it was intended "to regulate the general course of proceedings, to remove doubts concerning the right to begin, and to show in other respects how the inquisition should be conducted;" (R. v. Gardner, 6 A. & El. 117.) It does not refer to the right to costs: (Ibid.; R. v. The Sheriff of Worcester, 2 R. C. 661.)

(b) The Court cannot, even by consent, order a view in one county by a sheriff of another; neither can it compel a jury to go out of the limits of a county for such a purpose: (Malins v. Lord Dunraven, 9 Jur. 690.)

XLIV. If the sheriff make default in any of the matters hereinbefore required to be done by him in relation to any such trial or inquiry, he shall forfeit fifty pounds for every such offence, and such penalty shall be recoverable by the promoters of the undertaking by action in any of the Superior Courts; and if any person summoned and returned upon any jury under this or the special act, whether common or special, do not appear, or if appearing, he refuse to make oath, or in any other manner unlawfully neglect his

8 & 9 Vict. c. 18.

Sheriff to preside, witnesses to be summoned.

Section does not refer to right to costs.

View.

Penalty on sheriff and jury for default.

8 & 9 VICT. c. 18. duty, he shall, unless he show reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding ten pounds, and every such penalty payable by a sheriff or juryman shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend; and, in addition to the penalty hereby imposed, every such juryman shall be subject to the same regulations, pains, and penalties as if such jury had been returned for the trial of an issue joined in any of the Superior Courts.

Penalty on witnesses making default.

XLV. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness refuse to be examined on oath touching the subject-matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds.

Notice of inquiry.

XLVI. Not less than ten days' notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party.

If the party make default the inquiry not to proceed.

XLVII. If the party claiming compensation (a) shall not appear (b) at the time appointed for the inquiry such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two justices in manner hereinafter provided (c).

Lunatic not attending.

(a) A person of unsound mind, (not so found by inquisition,) not appearing on the proceedings, must be held as competent to convey, and therefore subject to the provisions of this section: (*In re East Lincolnshire Railway Act*, 1 Sim. N. S. 260.)

Appearance in one of a number of cases.

(b) Where a large number of notices to treat, referring to distinct parcels of land, was served by a company, on the same claimant, and the claimant's solicitor appeared in the first case called on, and then protested against the Court proceeding in the remaining cases, and withdrew from the inquiry; the Court of Queen's Bench in Ireland held that the appearance in one case was an appearance in all, and that the claimant was bound by the subsequent proceedings: (*Re Trustees of Marquis of Donegal*, 12 Ir. L. Rep. 539.)

(c) See secs. 59 and 60, *post*.

Jury to be sworn.

XLVIII. Before the jury proceed to inquire of and assess the compensation or damage in respect of which

their verdict is to be given they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage, and the sheriff shall administer such oaths, as well as the oaths of all persons called upon to give evidence.

XLIX. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict separately (a) for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which, under the provisions herein contained, he is enabled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if any (b), to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting (c) such lands by the exercise of the powers of this or the special act, or any act incorporated therewith.

(a) The provision herein contained, directing the verdict, the value of lands, and the compensation for injury to be delivered separately, is to be enforced in cases of disputed compensation tried at law under the Regulation of Railways Act, 1868, (31 & 32 Vict. c. 119, post,) s. 41.

The case of assessment of compensation under the compulsory powers, differs from that of settlement by private agreement, as regards the provisions of this section; for it has been held that there is no objection to an agreement which fixes a gross sum for compensation and consequential damage: (*Webb v. Direct London and Portsmouth Railway Co.*, 9 Hare, 129; and see Lord St Leonards on the Law of Vendors and Purchasers, 14th ed., p. 78.)

This provision is not compulsory, but directory merely, i.e., either the company or the claimant may call on the sheriff to keep the evidence distinct as to the value of the premises, and the satisfaction for damage, and to adjudicate a separate sum in respect of each; but if this is not done, and the jury assess a gross sum for both, the inquisition and subsequent judgment are not on that account to be held void: (See *per Tindal, C. J., Corrigan v. London and Blackwall Railway Co.*, 5 Man. & G. 249; *Re London and Greenwich Railway Co.*, 2 A. & El. 678; *R. v. Sheffield Railway Co.*, 11 A. & El. 194.)

If, however, the jury be impannelled to assess the several interests of several parties, and they find only a gross sum, the inquisition will be quashed on *certiorari*: (*R. v. The Trustees of the Norwich and Watton Road*, 5 A. & El. 563, in which case the jury found a gross sum to be the value to be paid to the parties, "according to

Sums to be paid for purchase of lands and for damage to be assessed separately.

Applies to 31 & 32 Vict. c. 119, s. 41.

Private agreement for a gross sum for consequential damage and compensation.

When separate assessment is necessary.

8 & 9 VICT. c. 18, their respective proportions therein." And see *Abrahams v. Mayor, &c., of London*, 3 W. N. 234, in which the precept directed the assessment of the value of the interests of the plaintiff and his under-tenants, and was held to be improperly framed.

Evidence of omission of interests in assessments.

Where a jury assessed compensation to a landowner, who was tenant for life, for damage done to his property, without noticing the interest of any other person, the Court refused, in the absence of an affidavit, to presume that the jury had given compensation for a larger interest than the tenant had, or had overlooked the interest of any other person : (*R. v. Nottingham Old Water-Works Co.*, 6 A. & EL. 355.)

Jury may find that there has been no damage.

(b) Where a railway act required the jury to give a verdict "for the sum to be paid for compensation for the damages sustained," and the company issued a warrant to the sheriff to impanel a jury to assess the sum of money, "if any," to be paid to a claimant for compensation, and the jury found that he had sustained no damage; the Court of Queen's Bench held that the jury, even though the words "if any" had not been in the warrant, would still have been authorised to find that there was no damage, and that the insertion of those words did not vary the duty imposed on the jury, or prevent the warrant from being in pursuance of the act : (*Reg. v. Lancashire and Preston Junction Railway Co.*, 6 Q. B. 759; 3 R. C. 725.)

Questions of title not to be entertained.

But the only question that can be inquired into on the inquisition is the amount of compensation for the damage, if any, actually done. The legal rights of the claimant cannot be entered into; nor can any question of title : (*Reg. v. London and North-Western Railway Co.*, 3 EL. & BL. 443; 23 L. J. (Q. B.) 185; *R. v. Metropolitan Railway Co.*, 32 L. J. (Q. B.) 367; S. C. nomine *Horrocks v. Metropolitan Railway Co.*, 4 B. & S. 315.) In the latter case, a man claimed damages in respect of his premises having been injuriously affected from the execution of the works of a railway company by the removal of the adjacent soil; and in answer to questions put to them, the jury found that if there had been no building by the claimant the ground would not have sunk; whereupon the assessor directed them as matter of law that the claimant had not sustained any legal damage, and the jury accordingly found under his direction that the claimant's property had not been injuriously affected. The Court of Queen's Bench quashed the inquisition, on the ground that the claimant's legal right to the lateral support of the adjoining soil was submitted by the assessor to the jury. The reason for thus limiting the function of the jury is stated by the Court of Queen's Bench in *R. v. Metropolitan Railway Co.* : "It is manifest that if the finding of the jury be allowed to stand, [as to the claimant's legal right to the lateral support of the adjoining soil,] the claimant's right is concluded without appeal; whereas, if the function of the jury on such an inquiry be restrained to the consideration of the damage in point of fact, the legal right of the claimant is not concluded by the finding, but the company may, as was recently decided by the Court of Exchequer in *Read v. The Victoria Station and Pimlico Railway Co.*, (*post*, p. 184.) by proper pleading, raise the question of title for determination in the action on the judgment."

What the proceedings must disclose on their face.

Whatever is necessary to give jurisdiction must appear on the face of the proceedings, otherwise they are void. Thus, where trustees

had power to turn roads through private grounds, by making satisfaction to the owners, and if they could not agree, they were enabled, on giving notice to the owners, to summon a jury to assess the damages, and to order such sum so ascertained to be paid to the owner, the Court quashed an inquisition of the jury and an order of the trustees, because it did not appear on the face of the proceedings that any notice had been given to the owners of the land: (*R. v. Bagshaw*, 7 T. R. 363.) The warrant and inquisition will be regarded as one proceeding; and if it can be made out by necessary intendment, from both taken together, that the statutory requisites have been complied with, that is sufficient: (*Taylor v. Clemson*, 2 Q. B. 1032; 11 Cl. & Fin. 610; *Reg. v. Manchester and Leeds Railway Co.*, 8 A. & El. 413; see also *Doe d. Payne v. Bristol and Exeter Railway Co.*, 6 M. & W. 320; *Ostler v. Cooke*, 132 B. 143; and *R. v. Swansea Harbour Trustees*, 8 A. & El. 439;) and the party who is the cause of any defect cannot himself set it up: (*R. v. South Holland Drainage Co.*, 8 A. & El. 429, in which case the claimant had agreed to dispense with a formal notice.)

Warrant and inquisition regarded as one proceeding.

Party causing defect cannot set it up.

(c) As to the meaning of these words, see notes to s. 68, *post*.

L. The sheriff before whom such inquiry shall be held shall give judgment (a) for the purchase-money or compensation assessed by such jury, and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the peace among the records of the general or quarter sessions of the county in which the lands or any part thereof shall be situate in respect of which such purchase-money or compensation shall have been awarded; and such verdicts and judgments shall be deemed records (b); and the same or true copies thereof shall be good evidence in all courts and elsewhere, and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom, on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies.

Verdict and judgment to be recorded.

(a) If the sheriff, for any reason, improperly refuse to execute the inquiry, a mandamus will be granted to compel him to do so: (*Walter v. London and Blackwall Railway Co.*, 3 Q. B. 744; 3 R. C. 396.)

Mandamus to enforce inquiry.

The verdict of the jury is conclusive and final as to the amount of damages, and the Court has refused to order a fresh precept to issue for a new trial, on the ground that the evidence showed a greater amount of damage to have been sustained than was found by the verdict, and that evidence of damage had been improperly excluded by the sheriff: (*Reg. v. Eastern Counties Railway Co.*, 2

How far verdict is final.

3 & 4 Vict. c. 13. Dowl. N. S. 945; 3 R. C. 466; *Chabot v. Lord Morpeth*, 15 Q. B. 446; 17 L. J. (Q. B.) 336; in which cases, however, the special acts provided that the verdict and judgment should be "binding and conclusive." *Read v. Victoria Station and Pimlico Railway Co.*, 32 L. J. (Ex.) 167. And where an action was brought upon a judgment to recover the amount of compensation assessed by the jury, it being proved that the lands were injuriously affected to some extent, it was held that the quantum of damages awarded by the jury could not be disputed by the company: (*Mortimer v. South Wales Railway Co.*, 28 L. J. (Q. B.) 129; 7 W. R. 292.)

Assessment of damages does not estop from showing that no damage has been done. But although where the lands have been injuriously affected the jury's estimate of the damage is conclusive, the assessment of damages by the jury is not conclusive that the lands have in reality been injuriously affected, and therefore in an action on the verdict and judgment to recover the amount awarded, the defendants are not estopped from pleading that the lands and the petitioner's interest therein were not damaged and injuriously affected: (*Read v. Victoria Station and Pimlico Railway Co.*, 32 L. J. (Ex.) 167; *Horrocks v. Metropolitan Railway Co.*, 4 B. & S. 324, 325; 32 L. J. (Q. B.) 367; see also *Chapman v. Monmouthshire Railway and Canal Co.*, 27 L. J. (Ex.) 97; 2 H. & N. 267.)

How inquisition may be drawn up. (b) This enactment does not render it necessary that the inquisition should be drawn up with the formality required in setting out the judgment of an inferior court: (*Per Littledale, J., Reg. v. Trustees of Swansea Harbour*, 8 A. & El. 439;) nor does it prevent parol evidence of the finding of the jury, and of the grounds on which it proceeded, being given where the verdict has not been recorded in pursuance of this section: (*Manning v. Eastern Counties Railway Co.*, 12 M. & W. 237; 3 R. C. 637.)

Parol evidence of verdict. The Court would doubtless, if necessary, compel by mandamus the enrolment of the inquisition: (*See Reg. v. Leeds Canal Co.*, 11 A. & El. 316.)

Costs of the inquiry, how to be borne. LL. On every such inquiry before a jury, where the verdict of the jury shall be given for a greater sum than the sum previously offered (a) by the promoters of the undertaking, all the costs of such inquiry (b) shall be borne by the promoters of the undertaking; but if the verdict of the jury be given for the same or a less sum than the sum previously offered (c) by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one half of the costs of summoning, impannelling, and returning the jury, and of taking the inquiry and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party shall bear his own costs, other than as aforesaid, incident to such inquiry.

(a) The words "previously offered," as interpreted by the Court 8 & 9 Vict. c. 18. of Common Pleas, (in *The Metropolitan Railway Co. v. Turnham*, 32 L. J. M. C. 249; 14 C. B. N. S. 212,) mean "offered previously to the ten days' notice of the time and place of holding the inquiry" required by s. 46; and the same interpretation was given to them by the Court of Queen's Bench in *Hayward v. The Metropolitan Railway Co.*, 33 L. J. (Q. B.) 73; 9 L. T. N. S. 680. See also *Ross v. York, &c., Railway Co.*, 5 D. & L. 695; 5 R. C. 516.

The promoters of the undertaking may make any fresh offers of compensation, provided they do so before giving the requisite notice of the time and place of inquiry: (*Hayward v. The Metropolitan Railway Co.*, *ubi supra*.)

(b) As to what these costs include, see next section.

Where no offer had been made by the company, but a jury had been summoned and assessed compensation to the claimant, a similar provision in a railway act was held not to entitle the claimant to the costs of the attorney's letters and attendances, nor to the expenses of plans, &c., paid to surveyors not called as witnesses: (*Reg. v. Sheriff of Warwickshire*, 2 R. C. 661.)

Where the payment of certain costs only are provided for by a company's act, the claimant's right is limited to such, though he be declared "entitled to the same rights and privileges as plaintiffs in actions at law:" (*R. v. Gardner*, 6 A. & El. 112. See also *Corrigal v. London and Blackwall Railway Co.*, 5 Man. & G. 219.)

(c) If the jury give the same amount as the company had previously offered, the company are not entitled to call on the landowner to defray any portion of their costs for counsel, attorneys, or witnesses, as being costs of taking the inquiry: (*Bray v. South-Eastern Railway Co.*, 19 L. J. (Q. B.) 11; 7 D. & L. 307.)

The meaning of the whole section is, that where a jury gives a verdict for the same or a less sum than was previously offered, the landowner and the company shall share what may be termed the formal costs, and that each party shall bear their own costs over and above the formal costs: (*Per Patteson, J.*, *Ibid.*)

Where no offer was made, but the claimant appeared before a jury summoned to assess compensation in other cases, and the company consented to give him double the amount which he had claimed, the Court of Queen's Bench in Ireland considered the claimant not entitled to the payment of any costs: (*Maher v. Southern and Western Railway Co.*, 13 Ir. L. R. 364.)

LII. The costs of any such inquiry shall, in case of difference, be settled (a) by one of the Masters of the Court of Queen's Bench of *England* or *Ireland* according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impannelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attorneys, recording the verdict and judgment thereon, and otherwise incident to such inquiry.

8 & 9 VICT. c. 18. (a) The master should tax the costs as between party and party; he has no jurisdiction to tax them as between solicitor and client: *O'Farrell v. Limerick and Waterford Railway Co.*, 13 Ir. L. R. 365; *Metropolitan Railway Co. v. Turnham*, 32 L. J. M. C. 249.)

How to be taxed.
Power to review master's taxation.

On the question whether the Court has jurisdiction to review the master's taxation, the authorities are divided. In the following cases it was held that it had not, the master being invested with the character of an original arbitrator: (*Re Ross v. York, &c., Railway Co.*, 5 D. & L. 695; 18 L. J. (Q. B.) 199; *Tennant v. Mayor, &c., of Belfast*, 11 Ir. L. R. 290; *Re Sulley*, 11 Ir. L. R. 292, followed by the Court of Queen's Bench in the recent case of *Owen v. London and North-Western Railway Co.*, 3 L. R. (Q. B.) 54.) Cockburn, C. J., observes in the last-cited case, (p. 60,) "I think that the only ground on which we can ever exercise jurisdiction in a matter of taxation is this, that the office of taxing costs to the successful party entitled is the business of the Court itself. . . . But where the Legislature thinks proper to give the power of taxation, and imposes the duty of taxation, not on the Court, but simply on one of the officers of the Court, without in any way rendering it necessary that the Court should interfere, it seems to me a case in which we have not any authority over the master."

The opposite doctrine was laid down by the Court of Common Pleas in *Metropolitan Railway Co. v. Turnham*, 32 L. J. M. C. 249; Erle, C. J., in that case, expressing himself thus with respect to the decision in *Re Ross v. York, &c., Railway Co.*:—"There was a decision of mine at the time I was sitting alone in the Bail Court in which I held that the 52d section placed the Master of the Queen's Bench in the situation of an independent arbitrator between the parties, that his *allocatur* was final, and subject to no review. When that doctrine was endeavoured to be enforced in a subsequent case, when I was sitting in the full Court, Lord Denman and the rest of the Court intimated that it would be extremely dangerous to create any absolute jurisdiction in the master, and that the proper construction of the statute was, that the parties were to go before the master, who was to make his *allocatur*, subject to the incident of its being reviewed by the Court of which he was a master, in the ordinary form. True it is that he is deputed by Parliament, and not by the Court; but I remember distinctly a long conversation with Lord Denman on the subject. I do not suppose it was stated in Court, for I do not find it reported anywhere, but I have the sanction of my learned brethren for saying that my remembrance of that learned judge's view of the law is in accordance with theirs at the present moment—that the decision of the master who has to tax the costs is not absolutely and exclusively final, but is subject to the review of the Court to which he belongs." It was not, however, necessary in this case to decide the point.

Where a private act provided that, on the application of either party, the costs should be "taxed and settled by a master of a superior court of law at Westminster," it was held that the masters taxed as *personæ designatæ*, and not as officers of the Court, and that the Court had no jurisdiction to review their taxation: (*Re Sheffield Waterworks Act*, 1864, L. R. 1 (Ex.) 54.)

The balance of authority seems, then, against the jurisdiction of the court to review the master's taxation, at least on motion to

review. *Quære* whether the Court can interfere by *certiorari* or 8 & 9 VICT. c. 18 mandamus: (*Owen v. London and North-Western Railway Co.*, *ubi supra*.)

Where an arbitrator was substituted for a jury by agreement between the parties, and made an award in favour of the claimant, the deed of reference and the award being silent as to costs, it was held that the provisions of the act with regard to costs did not apply: (*Ex parte Reynal*, 5 R. C. 60.)

By s. 33 of the "Regulation of Railways Act, 1868," (31 & 32 VICT. c. 119,) it is provided that "all disputed questions as to any costs, charges, and expenses of and incident to any arbitration or award made under the provisions of 'The Lands Clauses Consolidation Act, 1845,' or of any special act of Parliament incorporating the same, whether the question in dispute arise as to compensation to be made for lands required to be purchased and actually taken by any railway company, or in respect of the injurious affecting of other lands not taken, or otherwise in relation thereto, shall, if either party so requires, be taxed and settled as between the parties by one of the Masters of the Court of Queen's Bench; and it shall be lawful for such master to receive and take, in respect of each folio in length of every bill of costs so settled, a fee of one shilling and no more, and such fee shall be taken in money and not in stamps, and may be retained by the said master for his own use and benefit."

As to the fees payable to the master, see further s. 45 of the same act, *post*.

LIII. If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress (*a*), and on application to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the lands or of any interest therein, the same may be deducted and retained by the promoters of the undertaking out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor, under the provision hereinafter contained; and the payment or deposit of the remainder, if any, of such money, shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

(*a*) Upon an application for a distress warrant to levy the costs under this section, the magistrate is bound to consider the decision of the master as final: (*Metropolitan Railway Co. v. Turnham*, 32 L. J. M. C. 249.)

Where a remedy by distress is given by statute, it is very doubtful whether the Court would interfere by mandamus to compel the

Recent enactment as to costs.

Fees to master.

Payment of costs.

Magistrate cannot revise master's taxation.

Mandamus to enforce payment of costs.

8 & 9 Vict. c. 18. payment of costs : (*Reg. v. London and Blackwall Railway Co.*, 3 D. & L. 404 ; 4 R. C. 119.)

The landowner's proper course is to get the amount of the costs ascertained ; then to make a demand on the company, and if refused to proceed by distress.

Special jury to be summoned at the request of either party.

LIV. If either party (*a*) desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff ; and for that purpose the promoters of the undertaking shall, by their warrant to the sheriff, require him to nominate a special jury for such trial ; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him, by themselves or their attorneys, at some convenient time and place appointed by him, for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such summons ;) and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the Superior Courts (*b*) ; and the sheriff shall appoint a day, not later than the eighth day after striking of such jury, for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days' notice to the parties ; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the Superior Courts.

No time fixed for issuing warrant. The section fixes no time within which the company are to issue their warrant to the sheriff, requiring him to nominate a special jury.

Promoters need not give notice. (*a*) Where the promoters desire to have a special jury, they may do so without giving any notice to the claimant.

A notice by a claimant for a special jury under this section does not operate as a waiver of a previous notice (for a jury *simpliciter*) given under s. 68, nor exonerate the company from their liability under the latter section to issue their warrant within twenty-one days after the receipt of the first notice : (*Glyn v. Aberdare Railway Co.*, 28 L. J. (C. P.) 271.)

Irregularity in striking jury. (*b*) The proceedings are not rendered void by the sheriff's omission to strike the jury in sufficient time to allow three days before the

Special Jury—Compensation to absent Parties. 189

day of taking the inquisition for summoning them, as required by 8 & 9 Vict. c. 18. 6 Geo. IV. c. 50 : (*Ex parte Great Western Railway Co.*, 18 L. T. 92.)

LV. The special jury on such inquiry shall consist of twelve of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges (a) against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen who shall not have been previously struck off the aforesaid list, and who may then be attending the court or can speedily be procured, so as to complete such jury, all parties having their lawful challenges against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury, and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable, as hereinbefore provided in the case of a trial by common jury.

Deficiency of
special jurymen.

(a) Should any of the jurors not be duly qualified, the proper remedy is by challenge. If this is not done, the proceedings will not be held invalid : (*Re Chelsea Water-Works Co.*, 10 Exch. 731 ; 24 L. J. (Ex.) 79 ; 3 W. R. 174.)

LVI. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial.

Other inquiries
before same
special jury by
consent.

LVII. No jurymen shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any year.

Jurymen not to
attend more than
once a year.

LVIII. The purchase-money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who by reason of absence from the kingdom is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury, as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such able practical surveyor as two justices shall nominate for that purpose, as hereinafter mentioned.

Compensation to
absent parties to
be determined by
a surveyor ap-
pointed by two
justices.

8 & 9 Vict. c. 18. See further on the employment of surveyors, ss. 9 & 47, *ante*.

Two justices to nominate a surveyor.

LIX. Upon application by the promoters of the undertaking to two justices (*a*), and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall by writing under their hands nominate an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

2 & 3 Vict. c. 71, s. 14.

(*a*) 2 & 3 Vict. c. 71, s. 14, enacts that it shall be lawful for any one of the metropolitan police magistrates "to do alone any act at any of the said courts, or at any place where her Majesty shall order any such court to be holden within the limits of the metropolitan police district for the time being, which by any law now in force, or by any law not containing an express enactment to the contrary hereafter to be made, is or shall be directed to be done by more than one justice:" (See *Willey v. South-Eastern Railway Co.*, 6 R. C. 100; 1 Mac. & G. 58.)

Declaration to be made by the surveyor.

LX. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such justices, or one of them, make and subscribe the declaration following at the foot of such nomination; that is to say,

'I, *A.B.*, do solemnly and sincerely declare, That I will 'faithfully, impartially, and honestly, according to the 'best of my skill and ability, execute the duty of making 'the valuation hereby referred to me. *A.B.*

'Made and subscribed in the presence of

And if any surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

Valuation, &c., to be produced to the owner of the lands on demand.

LXI. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

LXII. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

8 & 9 VICT. c. 18.

Expenses to be borne by promoters.

LXIII. In estimating the purchase-money or compensation to be paid by the promoters of the undertaking, in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special act, or any act incorporated therewith (a).

Purchase-money and compensation, how to be estimated.

(a) Justices, arbitrators, or surveyors are not, as juries are, (by s. 49,) required to assess separately the amount of purchase-money and the amount to be paid by way of compensation for damage done; and therefore it is no objection under this section to the award of an umpire made under s. 23, that both are assessed in a gross sum, though each is expressly claimed: (*Re Bradshaw*, 12 Q. B. 562.)

Award of gross sum by justices, arbitrators, or surveyors.

LXIV. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the bank under the provisions herein contained (a), by reason that the owner of or party entitled to convey such lands or such interest therein as aforesaid could not be found or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or investment of the moneys so deposited under the provisions herein contained by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation, hereinbefore (b) authorised or required to be submitted to arbitration.

Where compensation to absent party has been determined by a surveyor, the party may have the same submitted to arbitration.

(a) See s. 76, *post*.

(b) See s. 25-37, *ante*, pp. 167-174.

LXV. The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the said sum so

Question to be submitted to the arbitrators.

& 9 Vict. c. 18. deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

If further sum awarded, promoters to pay or deposit same within fourteen days.

LXVI. If the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award, or in default thereof the same may be enforced by attachment, or recovered with costs by action or suit in any of the superior courts.

Costs of the arbitration (a).

LXVII. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators; but if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

(a) As to costs where the matter is referred to arbitration in the first instance, see s. 34, *ante*, p. 172.

To be settled by arbitration or jury, at the option of the party claiming compensation.

LXVIII. If any party shall be entitled to any compensation in respect of any lands (a), or of any interest therein (b), which shall have been taken for or injuriously affected (c) by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special act, or any act incorporated therewith, and if the compensation claimed in such case shall exceed the sum of fifty pounds, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit (d); and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands (e) in respect of which he claims compensation, and the amount of the compensation so claimed therein; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled,

the same shall be settled by arbitration in the manner ^{S & 9 Vict. c. 18.} herein provided; or if the party so entitled as aforesaid desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant (f) to the sheriff to summon a jury for settling the same in the manner herein provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs (g), by action in any of the Superior Courts (h).

(a) The word "lands" includes messuages, lands, tenements, and "Lands." hereditaments of any tenure. See s. 3, *ante*.

In a case in which an act provided that "lands" should include ^{Easements: right to a pier.} "easements, interests, rights, and privileges in, over, or affecting lands," a pier held under a license from the conservators of the Thames was diverted, and it was held that as the pier was not to be permanently used or taken, nor the easement to be extinguished, which would bring the case under s. 84, (*post*), the remedy of the plaintiffs was by proceedings as parties whose land was injuriously affected: (*Temple Pier Co. v. Metropolitan Board of Works*, 13 W. R. 535; 34 L. J. (Ch.) 262; 12 L. T. N. S. 369.) And see another case under the same act, *Macey v. Metropolitan Board of Works*, 33 L. J. (Ch.) 377; 3 N. R. 669.

Much doubt was expressed by Lord Cranworth in a case in which a question arose whether an easement was a subject of compensation under the Lands Clauses Act: (*Pinchin v. London and Blackwall Railway Co.*, 5 De G. M. & G. 861, 862;) although his Lordship seemed to think that rights of way, of common, and of ^{Right of common, &c.} turbary were not to be so treated.

In a very recent case at law, however, it was held that an ease- ^{Obstruction of light.} ment was an interest in land, for the invasion of which compensation may be claimed under this act: *Eagle v. Charing Cross Railway Co.*, (L. R. 2 C. P. 638,) where a company by the erection of their works occasioned a diminution of light to claimant's premises, whereby they were rendered less convenient and suitable for the requirements of his trade carried on therein, and he was held entitled to compensation under the statute, though the saleable value of his premises was not diminished, the value of property in the neighbourhood generally having become greatly enhanced by reason of the company's works.

But where, by a memorandum not under seal, the claimant hired ^{Right of sporting.} the exclusive right of fishing and shooting over certain lands for

S & 9 VICT. c. 18. three years, during which time part of the lands were sold to a company, who constructed a line of railway across it, it was held that he had *not* such an interest in land as would entitle him to compensation for the injury done to his right of sporting under the Lands Clauses Act: (*Bird v. Great Eastern Railway Co.*, 34 L. J. (C. P.) 366;) and *per* Erle, C. J., that a grant under seal would have given him no better title: (*Ibid.*)

Interest in land under agreement for a lease. (b) Where the plaintiff held his property under an agreement for a lease for a term exceeding three years, although at law he might be treated as a mere tenant from year to year, he was held entitled to have his compensation assessed under this section, and not under s. 121, *post*: (*Sweetman v. Metropolitan Railway Co.*, 1 H. & M. 543; 10 L. T. N. S. 156.)

Tenant from year to year. A tenant from year to year, whose lands are "injuriously affected," but the possession of them not required by the company, cannot have the compensation assessed before justices only under s. 121, *post*, but must proceed under the present section: (*Somers v. Metropolitan Railway Co.*, 31 L. J. (Q. B.) 261; 10 W. R. 717.)

As to compensation to a tenant from year to year when possession of lands occupied by him is required, see s. 121, and notes thereto, *post*.

Lessee under invalid lease. Where a lessee held leases which turned out to have been invalid, as they were granted by executors instead of the heir of the last surviving trustee, only so much of the compensation assessed by the jury as would recoup the plaintiff in respect of improvements made by him on the faith of the leases was ordered to be paid to him, and the remainder to be paid into Court or returned to the company: (*Ex parte Cooper*, 2 Dr. & Sm. 312; 34 L. J. (Ch.) 373; 11 Jur. N. S. 103; 11 L. T. N. S. 661; 13 W. R. 364.)

Consecrated land. If consecrated land be taken by a company under its compulsory powers, the owner is entitled to its value as applicable to secular purposes: (*Hilcoat v. Archbishops of Canterbury and York*, 10 C. B. 327; 19 L. J. (C. P.) 376.)

Titheable land. In the case of titheable lands, the tithe owner was, before the passing of the Lands Clauses Act, held not entitled to compensation for the tithes lost in consequence of the taking of the lands for the purpose of navigation: (*R. v. Commissioners of Nene Outfall*, 9 B. & C. 875.)

An annuitant, with a power of distress on certain land, being served with a notice to treat, was held not to be entitled, upon a bill not alleging fraud or improper conduct on the part of the company, to an account, when the company subsequently purchased the land of a prior incumbrancer with a power of sale: (*Hill v. Great Northern Railway Co.*, 5 De G. M. & G. 66; 23 L. J. (Ch.) 524; 2 W. R. 31.)

Compensation to lessor in respect of beneficial covenants in a lease. The owner of lands let on lease taken by a company may claim compensation for the value to him of the premises, taking into account the covenants in the lease. Thus it has been held that a brewer, the owner in fee of a public-house, let on lease with the usual restrictive covenant to take beer from the landlord, was entitled to compensation from a railway company who took his house under their act of Parliament, for the additional value of the premises by reason of such restrictive covenant: (*Bourne v. Mayor of Liverpool*, 33 L. J. (Q. B.) 15.)

Meaning of lands "taken." The mere service of a notice to treat under s. 18, does not amount to a taking of the lands within the meaning of this section;

What is a "taking" of lands—"Injurious affected." 195

the lands must be actually taken: (*Burkinshaw v. Birmingham, &c.*, 8 & 9 VICT. c. 18. *Railway Co.*, 5 Exch. 475; *Imperial Gas Light Co. v. Broadbent*, 29 L. J. (Ch.) 377; *R. v. Stone*, 1 L. R. (Q. B.) 529; 35 L. J. M. C. 208; 14 W. R. 791.) But an actual entry on the lands is not necessary. Thus where a company, after having given notice to the lessee of premises, subsequently arranged with a tenant who held under him from year to year, and received from this tenant the key, it was held that the jury were warranted in finding from these facts that the company had actually taken the premises: (*Barker v. Metropolitan Railway Co.*, 17 C. B. N. S. 785; 11 L. T. N. S. 312; 10 Jur. N. S. 1127.)

And where, after service of a notice to treat by a railway company, the party served replied by a notice stating his title to the land and the compensation he claimed, and the company neither referred the matter to arbitration nor summoned a jury to decide it, it was held by the Court of Queen's Bench in Ireland, that they thereby acquiesced in the offer made, and that the owner might under this section maintain an action for the amount claimed: (*Eaton v. Midland Great Western Railway Co.*, 10 Ir. L. R. 310.)

Where notices and counter-notices had been served, but an agreement was subsequently arrived at as to compensation, the company having nevertheless entered under s. 85, and refused to summon a jury to assess the compensation under s. 21, it was held that the plaintiff ought to proceed under s. 68, notwithstanding the entry of the company under s. 85, and that s. 21 did not apply in such a case: (*Adams v. London and Blackwall Railway Co.*, 19 L. J. (Ch.) 557; 2 M'N. & G. 118; 6 R. C. 271.)

(c) Three things are necessary to entitle a party to compensation under this clause: (1.) That the particular injury for which compensation is claimed should have been actionable if done by an individual or by the company before they had acquired their statutory powers: (*Re Penny*, 7 El. & Bl. 669; *Chamberlain v. West End of London and Crystal Palace Railway Co.*, 31 L. J. (Q. B.) 201; *Caledonian Railway Co. v. Colt*, 3 M'Q. H. L. 838;) but this rule does not apply to cases where the act causing the mischief is done on claimant's own land taken from him by the company by force of their statute: (*Re Stockport, &c., Railway Co.*, 33 L. J. (Q. B.) 251; 10 L. T. N. S. 426;) (2.) That the act causing the injury is one which the company may lawfully do under their act, because for anything done in excess of their powers the remedy is by action at law: (*Broadbent v. Imperial Gas Co.*, 7 H. L. C. 600; 26 L. J. (Ch.) 276; *Caledonian Railway Co. v. Colt*, 3 M'Q. H. L. 838;) (3.) That the damage be done to the land itself, and be not a damage to the owner, resulting from a mere temporary obstruction: (*Ricket v. Metropolitan Railway Co.*, 2 L. R. (Appl.) 175.)

If the damage done is caused, not by "the execution of the works," but by negligence in their construction, an action on the case for the injury lies against the company; but where it results from "the execution of the works" authorised by statute, the statutory authority is a bar to the action: (*Brine v. Great Western Railway Co.*, 31 L. J. (Q. B.) 101; *Lawrence v. Great Northern Railway Co.*, 16 Q. B. 643; *Clothier v. Webster*, 31 L. J. (C. P.) 316.)

Although to found a title to compensation for lands "injuriously affected," Right to compensation does

What is necessary to entitle to compensation for lands "injuriously affected."

Damages from negligence in construction of works.

8 & 9 Vict. c. 18. affected" under this section, it is essential that the particular injury complained of should be one for which an action would have lain but for the statutory authority to do it, it does not follow that a party has a right to compensation in all cases in which, if the act of Parliament had not passed, there might have been a right of action: (*Per Lord Cranworth, Caledonian Railway v. Ogilvy*, 2 M'Q. H. L. 235.) An action would lie for a special damage to a personal interest, yet no compensation is given under the statute unless land has been injuriously affected: (Judgment of Ex. Ch., *Rickett v. Metropolitan Railway Co.*, 34 L. J. (Q. B.) 259.)

Compensation in respect of extension of time under 31 Vict. c. 18. By the Railways (Extension of Time) Act, 1868, (31 Vict. c. 18, see *post*, App.,) s. 15, it is enacted that justices, arbitrators, umpires, and juries, in estimating the compensation to be made by the company to the owners or occupiers of or persons interested in lands, shall have regard to and make compensation for the additional damage (if any) sustained by the owners, occupiers, or persons by reason of any extension of time for the completion of the railway or works by virtue of a warrant granted for the purpose by the Board of Trade under the act.

Inevitable injury during construction. Where the injury is inevitable from the nature of the works, as in the construction of a canal, during which occasional floods are almost certain to happen, the machinery of the 68th section is the only remedy applicable: (*Ware v. Regent's Canal Co.*, 3 De G. & J. 212.)

Where there is no exclusively individual injury, the Attorney-General should sue.

And though, as we have already seen, an action at law will lie for the defective execution of the works, or an excess of the powers of the company, still, where there is no direct injury to an individual, or an injury is merely imminent, the Attorney-General, and not the individual, is the proper party to sue: (*Ibid.*; *Spencer v. London and Birmingham Railway Co.*, 1 R. C. 159; *Semple v. London and Birmingham Railway Co.*, 1 R. C. 480.)

And where the individual is a mere lessee, it seems that the lessor is not a necessary party: (*Semple v. London and Birmingham Railway Co.*, 1 R. C. 487.)

Lands "injuriously affected."

The following are instances of lands being "injuriously affected" within the meaning of the section, and in which the owner was held entitled to compensation:—Cutting off access to property, by raising an embankment near it, and compelling the owner to open new means of access, &c.: (*Reg. v. Bristol and Exeter Railway Co.*, Crown Office Roll, 7 Vict., cited 2 Chit. St. (3d ed.) 1164;) taking away the access to a person's premises, by means of a navigable river, (through a causeway or jetty, extending from high to low water-mark, and connected with a stone staircase in claimant's garden,) and substituting in lieu thereof a highway by land, (an embankment intended to be used as a public foot and carriage roadway): (*Duke of Buccleuch v. Metropolitan Board of Works*, 18 L. T. N. S. 906;) lowering a road, and thereby impeding the access to adjoining land, and rendering necessary additional fences, &c.: (*Reg. v. Eastern Counties Railway Co.*, 2 Q. B. 347; 2 R. C. 736;) erecting an embankment on a portion of the highway opposite claimant's house, thereby narrowing the road from fifty to thirty-three feet, and thus, according to the evidence, materially diminishing the house for selling or letting, and obstructing the access of light and air to it: (*Beckett v. Midland Railway Co.*, 3 L. R. (C.P.) 83; 37 L. J. C. P. 11; 17 L. T. N. S. 499;)

carrying a line of railway across two *private* roads, which formed the only access to claimant's house, and erecting gates on each side of the railway across the roads: (*Glover v. North Staffordshire Railway Co.*, 20 L. J. (Q. B.) 376;) making and maintaining a railway, without a sufficient drainage to protect the neighbouring property: (*Reg. v. North Union Railway Co.*, 1 R. C. 729;) raising the level of a brook, and thereby causing it to inundate and stop certain coal-works: (*Reg. v. North Midland Railway Co.*, 2 R. C. 1;) raising a public road, thereby impeding the access to claimant's house, rendering it damp and unwholesome by rain and mud, which penetrated into it from an adjoining bridge, and causing loss of health to claimant: (*Twohey v. Great Southern and Western Railway Co.*, 10 Ir. L. R. (N. S.) 98;) making a railway on claimant's lands, so close to his cotton mill, that by reason of the proximity of the railway, and the danger of fire from the trains using the line, the building was less suitable for a cotton mill, could only be insured at an increased premium, and was rendered of less saleable value: (*Re Stockport, &c., Railway Co.*, 33 L. J. (Q. B.) 251; 10 L. T. N. S. 426;) interrupting the access to claimant's wharf from the river, (*Bell v. Hull and Selby Railway Co.*, 1 R. C. 616,) and to an ancient ferry: (*Re Cooling*, 19 L. J. (Q. B.) 25;) blocking up a right of access to the river Thames, and of loading barges: (*Macey v. Metropolitan Board of Works*, 33 L. J. (Ch.) 377; 12 W. R. 619; 10 L. T. N. S. 66;) cutting off a stream which ran through claimant's farm, and was used by him for irrigation and other purposes: (*Little v. Dublin and Drogheda Railway Co.*, 7 Ir. L. R. N. S. 82.) As to injury to a mill, by altering a weir, see *Reg. v. Nottingham Old Water-Works*, 6 A. & El. 355; and as to loss of tolls by stopping up an ancient towing path, see *Reg. v. Thames and Isis Navigation Commissioners*, 5 A. & El. 804.

The following are also cases decided on the subject of lands "injuriously affected" within the meaning of this section:—Where a railway company constructed a tunnel near an inn, and the vibrations caused by the passing of the trains prevented beer being kept in the cellars in a state fit for consumption, the Lord Chancellor dissolved an injunction which had been granted to prevent the innkeeper from proceeding for compensation under this section: (*London and North-Western Railway Co. v. Bradley*, 3 M. & G. 336; 6 R. C. 551, 560.) In *Croft v. London and North-Western Railway Co.*, 32 L. J. (Q. B.) 113; 3 B. & S. 436, Cockburn, C. J., was of opinion that the damage likely to accrue to buildings over a tunnel, from subsidence and vibration, and which might have been foreseen, was matter which might and ought to have been taken into consideration by the arbitrator, and assessed prospectively: but the decision in that case turned on another point. And in *Brand v. Hammermith and City Railway Co.*, 36 L. J. (Q. B.) 139; 2 L. R. (Q. B.) 223; 16 L. T. N. S. 101, it was held by the Court of Exchequer Chamber, reversing the decision of the Court of Queen's Bench, that where a house and premises adjoining a railway, but untouched by it, were depreciated in value through vibration, noise, and smoke, caused by the passage of locomotives over the railroad, after it had been completed, the owner was entitled to compensation.

Landowners or owners of property not taken for the purposes of the railway, but in the neighbourhood of a railway, considering them- Persons whose property is in-

Injury from vibration and subsidence.

3 & 9 Vict. c. 18.
—
juriously affected
need not estab-
lish their right
at law before
proceeding un-
der this section.

Sectus, in cases
of disputed
rights and of
great delay.

Proximity of
company's coke
ovens.

Damage to goods
in neighbouring
shops.

Obstructions
preventing cus-
tomers reaching
shop.
Stopping up pas-
sages.

selves entitled to compensation, (to be obtained in the manner indicated by this section,) for injury alleged by them to have been caused by the works of the company, are not now driven to bring an action at law to establish their right to compensation before proceeding under this section. It is true that in the case of *London and North-Western Railway Co. v. Smith*, (1 M.N. & G. 216,) an interim injunction was granted to restrain the defendant, the owner of certain houses in a street stopped up by the company, but whose houses had not been taken, from proceeding under this section, pending the trial of an issue directed by the same order; but since the cases of *East and West India Docks Co. v. Gatlke*, (3 M.N. & G. 155; 20 L. J. (Ch.) 217; 6 R. C. 371,) and *Lancashire and Yorkshire Railway Co. v. Evans*, (15 Bea. 322,) this case can no longer be considered as law.

But where notice under s. 18, and counter-notice under s. 92, had been given, and much delay had taken place, and the company entered under s. 85, whereupon renewed negotiations followed, both the Vice-Chancellor and, on appeal, the Lord Chancellor held that the questions ought, under such circumstances, to be decided at law, before proceeding before a jury, and an injunction went to prevent proceedings under s. 68 being taken: (*London and South-Western Railway Co. v. Coward*, 5 R. C. 703; 1 H. & T. 377.)

So also where an injunction was prayed to restrain an alleged nuisance, caused by the proximity of the company's coke ovens, the evidence on the subject being conflicting, the Lord Chancellor, in overruling the Vice-Chancellor's decision, refused the injunction, since he thought the jurisdiction of the Court of Chancery was for the protection of the right at law, the dispute as to which should first be tried by action: (*Semple v. London and Birmingham Railway Co.*, 1 R. C. 120; and see *Kemp v. London and Brighton Railway Co.*, 1 R. C. 504; but see *Warburton v. London and Blackwall Railway Co.*, 1 R. C. 558.)

In *East and West India Docks Co. v. Gatlke*, (*ubi supra*.) the defendant was a haberdasher, and he complained of damage to his goods, caused by the dust and dirt arising from the plaintiff's works, of obstructions which prevented his customers from reaching his shop with ease, and consequent loss of trade, and also of the stopping up of a certain passage, of which he had previously engaged the use. No part of the defendant's premises were included in the schedule to the special act. Lord Truro refused to grant an injunction to restrain the assessment of damages under s. 68 of the Lands Clauses Act, observing that the compensation is not to be limited to damage sustained by persons whose land, or a part thereof, is taken or interfered with.

The grounds of this decision were explained to be the delay and oppression arising from the necessity of proceeding by mandamus to compel the company to summon a jury.* And his Lordship remarked that the issuing of a precept by the company, being a duty imposed by the Legislature, could not be construed into an admis-

* It seems, however, that since the cases of *Corrigal v. London and Blackwall Railway Co.*, 5 Man. & G. 219; and *Williams v. Jones*, 13 M. & W. 628, the remedy is by action for the sum claimed, and not by mandamus.

sion of the right of the claimant to compensation. Lord Truro, 8 & 9 Vict. c. 18 however, noted the difference between the case before him and *London and North-Western Railway Co. v. Smith*, saying that in the latter the injury to the plaintiff was the same as that suffered by all the Queen's subjects, and that the principle of *Rex v. Bristol Dock Co.*, 12 East, 429, applied; whereas in *East and West India Docks Co. v. Gatlke*, (*supra*), the claim was individual and personal.

An injunction to restrain the defendant from taking the benefit of s. 68 was refused where the company had crossed a road leading to defendant's farm. The case of *East and West India Docks Co. v. Gatlke* was expressly followed, and the authority of *London and North-Western Railway Co. v. Smith* impugned: (*South Staffordshire Railway Co. v. Hall*, 1 Sim. N. S. 373.)

And where an act allowed the working of coal, provided no injury was done to a certain canal, notice having been given to the coal owner not to work, the Lord Chancellor, overruling the decision of the Vice-Chancellor, refused to prevent the defendant from proceeding to have the compensation assessed before the proper tribunal: (*Cromford Canal Co. v. Cutts*, 5 R. C. 442.)

The same was the result of an application to restrain a defendant, who complained of the vibration caused by the passing of trains near his inn, whereby his ale and beer became thick and muddy: (*London and North-Western Railway Co. v. Bradley*, 3 M.N. & G. 336; 6 R. C. 551.)

The case of *Lancashire and Yorkshire Railway Co. v. Evans*, 15 Bea. 322, was of the same nature as the foregoing, being an application for an injunction to prevent proceedings under s. 68 by a defendant, the owner of certain dye-works, which were alleged to be injuriously affected by the dropping of lime and tar into a reservoir. It was decided that this must constitute a title to compensation, and that there being no equity to prevent the defendants from enforcing their rights, no injunction could be granted.

(Note.—In this case, and also in a case of *Sutton Harbour Co. v. Hutchins*, 15 Bea. 161; 16 Bea. 381; 1 De G. M. & G. 161, the injunction had been applied for upon the authority of *London and North-Western Railway Co. v. Smith*, and it was considered right that the bills should be dismissed without costs.)

Where there is an original equity affecting the claim, the case is different, and an injunction will be granted. Thus, where lands were taken upon a contract that the company are to make certain communications, rendered necessary by the severance of the plaintiff's land, s. 68 was held not to apply, and specific performance of the contract was decreed: (*Sanderson v. Cockermouth and Workington Railway Co.*, 19 L. J. (Ch.) 503.)

And in *Duke of Norfolk v. Tennant*, (9 Ha. 745,) it was stated that *Gatlke's* case only settled that the Court ought not to interfere to restrain proceedings under s. 68, because the act does not settle the preliminary question whether the property is injuriously affected or not, and that this would not touch a case in which the lands are taken under a contract which affected some of the claims for compensation. An injunction on these grounds was therefore granted in this case.

If the injury is one affecting the Queen's subjects generally, the proper remedy is by indictment: (*Caledonian Railway Co. v. Ogilvy*,

Crossing roads.

Damage from working coal.

Damage to liquors from vibration caused by trains.

Damage to dye-works by fouling reservoir.

Distinction in cases of contract.

Lands not "injuriously affect-

8 & 9 Vict. c. 18, § 2 M'Q. H. L. 249; *Lancashire, &c., Railway Co. v. Evans*, 15 Bea. 322.) Thus it has been held that the owners of a brewery cannot claim compensation for loss to their business resulting from the deterioration of a public river which supplied water to the brewery by means of pipes laid under low-water mark, the use of the water having been common to all the sovereign's subjects, and not claimed as an easement to the particular tenement: (*R. v. Bristol Dock Co.*, 12 East, 429.) It has also been held that the claimant was not entitled to compensation in the following cases:—Where the company pulled down an insufficient party wall, which a purchaser might do under the provisions of the Building Act: (*R. v. Hungerford Market Co.*, 1 A. & El. 676;) for stoppages and other mere inconveniences incident to the crossing (within a few yards of claimant's lodge) of a public road by a railway on the level, the inconveniences in such a case being such as all the Queen's subjects are exposed to, and for which no particular or individual remedy exists: (*Caledonian Railway Co. v. Ogilvy*, 2 M'Q. H. L. 229; *Wood v. Stourbridge Railway Co.*, 16 C. B. N. S. 222;) for erecting a twenty-foot embankment in front of claimant's marine residence, and thereby interfering with his right of bathing, boating, and fishing: (*Falls v. Belfast and Ballymena Railway Co.*, 12 Ir. L. R. 233;) for an annoyance caused by persons standing on the bank of a railway, and overlooking claimant's premises, such annoyance being an injury to the amenities of his residence, and not so injuriously affecting his property that an action would lie: (*Re Penny*, 26 L. J. (Q. B.) 225; 5 W. R. 612;) for diversion of subterranean water from claimant's land by a tunnel constructed by the company on their own land, such being done in the exercise of the ownership of their own land: (*Galgay v. Great Southern and Western Railway Co.*, 4 Ir. L. R. N. S. 456;) for injury done to claimant's well by intercepting water which would otherwise have percolated through the strata of earth into the well: (*New River Co. v. Johnson*, 29 L. J. M. C. 93; see *R. v. Metropolitan Board of Works*, 32 L. J. (Q. B.) 105;) nor, it would seem, for merely narrowing a road in front of a house: (*Beckett v. Midland Railway Co.*, 1 L. R. (C. P.) 241, in which case the award was held bad for including compensation for such a claim.)

Amount of compensation sole question for jury or arbitrator.

(d) The amount of the compensation is the only question for the arbitrator or jury to determine: they have nothing to do with the right of the claimant to the interest which he claims, (see *Ware v. Regent's Canal Co.*, 23 L. J. (Ex.) 145;) nor can they determine whether the promoters are excused from the obligation to pay by any collateral matter: (*Re Byles*, 25 L. J. (Ex.) 53; *Brandon v. Brandon*, 34 L. J. (Ch.) 333.)

An award is bad if any one of the claims for which compensation has been awarded is not legally enforceable; at any rate, unless the damages are so assessed that the objectionable part can be severed from the rest: (*Beckett v. Midland Railway Co.*, 1 L. R. (C. P.) 241, 247;) and a plea to an action on the award, setting out the facts from which this appears, is a good plea: (*Ibid.*)

Evidence of umpire admissible to show that award is bad.

It was decided by the Court of Exchequer (*dissentiente Bramwell, B.*) in the *Duke of Buccleuch v. Metropolitan Board of Works*, 18 L. T. N. S. 906, that the evidence of the umpire appointed under this act was admissible for the purpose of showing that the award

was void, as being in part made in respect of matters over which he s & 9 VICT. c. 18. had no jurisdiction.

And in a recent case in equity, where a motion to set aside an award was made on the ground of mistake of legal principles, the umpire was subpoenaed, and attended, but refused to give evidence. He had, however, drawn up a statement of his reasons for making the award, and this was allowed to be read: (*Re Dare Valley Railway Co.*, 3 W. N. 216.)

The general rule is, that the tenant of lands taken is entitled to the full marketable value of his interest in them: (see *ex parte, Farlow*, 2 B. & Ad. 341.) Amount of compensation when lands are taken.

It was provided by statute (the Hungerford Market Act, 11 Geo. IV. c. lxx.) that all tenants for years, from year to year or at will, who should sustain any damage "in respect of any interest whatsoever for goodwill, improvements, tenant's fixtures, or otherwise," by reason of the passing of that act, should be entitled to compensation. A tenant from year to year was ejected by the company, but received a regular half-year's notice to quit. It appearing that she had been many years in possession, and that the tenancy was not likely to have been determined if the act had not passed, it was held that she was entitled to compensation for the whole marketable interest which she had in the premises at the time when the act passed; and that the goodwill, though of premises on so uncertain a tenure, was protected by the act as an interest which would practically have been valuable as between the tenant and a purchaser, though it was not a legal interest as against the landlord: (*Ibid.*; see also *Ex parte Still*, 4 B. & Ad. 592.) But a tenant from year to year, determinable at three months' notice at any quarter day, and with a stipulation against underletting without leave, was held not entitled to compensation under the same act: (*Re Palmer*, 9 A. & El. 463.) See further as to the adjustment of the rights of lessees to compensation, s. 74, *post*, and the notes thereon.

The principle upon which the amount of compensation is estimated when lands are taken, is different from that on which it is estimated when they are not taken but only "injuriously affected." In the former instance, compensation is allowed for the profits of trade; "the company claiming to take land by compulsory process, expel the owner from his property, and are bound to compensate him for all the loss caused by the expulsion; and the principle of compensation then is the same as in trespass for expulsion. . . . But where no land has been taken, if it was held that a claim could be sustained against a company for the loss of profit, which a jury could attribute to an obstruction of a highway in the execution of their works, the liabilities in a dense population would be innumerable. The common law limited the remedy for obstructions of public rights to indictment, unless there was special damage, to prevent innumerable actions, and the same reason applies in full force to prevent innumerable claims on account of an alleged loss of profits caused by obstructing a thoroughfare." (Judgment of Exchequer Chamber in *Ricket v. Metropolitan Railway Co.*, 34 L. J. (Q. B.) 257.)

A jury, whether the dispute be as to the value of land required to be taken by the company, or as to the compensation for damages by severance, in assessing the amount to which the landowner is en- Jury may take into account future more bene-

8 & 9 Vict. c. 18. s. 68. titled, may take into account not only the present purpose to which the land is applied, but also any other more beneficial purpose to which, in the course of events, at no remote period, it may be applied, just as an owner might do if he were bargaining with a purchaser in the market : (*Per Cockburn, C. J., Reg. v. Brown*, 2 L. R. (Q. B.) 631). Thus where, by the construction of a railway, part of an owner's land was taken, and several acres were severed from the rest, and all access cut off, the land at the time the railway was constructed being agricultural, but having a prospective value for building, it was held that the compensation jury valuing it as building land might estimate the damage by severance, as if all access were cut off, without any regard to the power of justices under ss. 68 and 69 of the Railways Clauses Consolidation Act, to order accommodation works, as these works could only be ordered with reference to the land as then used for agricultural purposes, and would have been useless as an access to building land : (*Ibid.*)

Injury to trade
by temporary
obstruction.

Ricket's case.

The leading case on the subject of interruption of trade and injury to the good-will of premises is that of *Ricket v. Metropolitan Railway Co.*, (2 L. R. H. L. 175. See the case below, 5 B. & S. 149-156 ; 34 L. J. (Q. B.) 257 ; and *Gatke's case*, 3 M. & G. 155 ; 6 R. C. 371, stated above,) in which the House of Lords (Lords Chelmsford and Cranworth, *dissentiente* Lord Westbury) affirmed the decision of the Exchequer Chamber, reversing that of the Queen's Bench. The important point which that case establishes is this, that where the claimant's land is not taken by the company, but only injuriously affected, he is entitled to compensation only in respect of damage done to the *land itself*, and not for any personal damage resulting from a mere temporary obstruction. In that case the railway company, in executing their works obstructed, by means of hoardings and slips continued for twenty months, the streets leading to a public-house occupied by the claimant, thereby making the access to it inconvenient. The jury having found that there was no structural damage to the premises, but that the claimant had sustained damage in respect of the interruption to his business, it was held on appeal that he was not entitled to compensation under the present section, or s. 6 of the Railways Clauses Act. "The injury," said Lord Cranworth in his judgment, "must be actual injury to the land itself, as by loosening the foundation of buildings on it, obstructing its light or its drains, making it inaccessible by lowering or raising the ground immediately in front of it, or by some such physical deterioration. Any other construction of the clause would open the door to claims of so wide and indefinite a character as could not have been in the contemplation of the legislature."

Chamberlain's
case.

Where, however, there is an actual injury to the house or land itself, consequential upon the acts done by the company, the owner is entitled to compensation ; as in *Chamberlain's case*, (2 B. & S. 605,) in which the claimant was lessee of four houses in the highway, and of eight others in the course of erection for the purpose of being used as dwelling-houses, fronting a new road running at right angles to the highway, across which the railway was constructed, rendering the access to the houses less convenient, notwithstanding the substitution of a deviation road, and rendering them less useful for being used and occupied as shops.

Previously to the case of *Ricket v. Metropolitan Railway Co.*, it was 8 & 9 Vict. c. 18. held in the cases of *Senior v. Metropolitan Railway Co.*, (2 H. & C. 258; 32 L. J. (Ex.) 225,) and *Cameron v. Charing Cross Railway Co.*, (16 C. B. N. S. 430; 33 L. J. (C. P.) 313,) that where no structural damage had been sustained, but the obstruction had caused loss of business, the claimant was entitled to compensation on the ground that loss of trade was an injury to the value of the land itself, and therefore the subject of compensation under the present section; but these two cases are now overruled by the decision of the House of Lords in *Ricket's case*.

With regard to damage that may be foreseen, compensation must be once for all, and a claimant cannot afterwards recover compensation for such damage, by action or otherwise: (*Croft v. London and North-Western Railway Co.*, 32 L. J. (Q. B.) 113; *R. v. Leeds and Selby Railway Co.*, 3 A. & El. 683.)

Compensation must be once for all for damage which can be foreseen.

As to damage subsequently accruing, and not foreseen at the time compensation was assessed, the authorities are not quite so clear, but it seems that compensation for it may be recovered under this section. Where the compensation to be paid by a railway company to the owner of land, from whom the company had purchased some land, for all injury and damage to his remaining estate, "by severance or otherwise," had been assessed by an arbitrator, it was held that the compensation awarded related only to such damage as was capable of being ascertained and estimated at the time, and did not embrace contingent and possible damages which might arise afterwards by the works of the company at other places, and which could not be foreseen by the arbitrator: (*Lawrence v. Great Northern Railway Co.*, 16 Q. B. 643.) So it was held by the Court of Exchequer that the arbitrator should not award compensation for future damage that may possibly arise to that part of the claimant's land which is not taken, by reason of the execution of the company's works, as, when such damage arose, the claimant would "be entitled to compensation under the 68th section, which is expressly provided to meet such a case as this:" (*Ware v. Regent's Canal Co.*, 9 Exch. 395; 7 R. C. 780.) In *Croft v. London and North-Western Railway Co.*, (32 L. J. (Q. B.) 120,) in which case it was not necessary to decide the point, as the Court was of opinion that the damage there was foreseen, Cockburn, C. J., says—"It certainly would, as far as the company is concerned, be grievously harassing if, upon any occasion upon some unforeseen damage arising afterwards, they were to be subject to litigation. The Legislature evidently contemplated that there should be an arbitration to settle the difference, or that a jury should be called in, and not that the company should be made liable to harassing actions to all time. It is true there may be cases in which damage not contemplated, not foreseen at the time when the inquiry takes place, either before the arbitrator or before the jury, may arise; but I think it is more likely to be the other way." But Mellor, J., says, (p. 122,) "I am far from saying, that in some instances a jury might not be summoned to assess compensation for injury which could not be foreseen at the time the jury were first summoned to assess compensation in the particular case, or where the arbitrator at the time of his award could not have foreseen the damage that afterwards resulted."

Contingent future damage.

8 & 9 VICT. c. 18. And Crompton, J., in the same case, distinguishes between foreseen and unforeseen damage, and expresses no opinion as to the latter. (See further, *Broadbent v. Imperial Gas Co.*, 26 L. J. (Ch.) 276; *R. v. Aire and Calder Navigation*, 30 L. J. (Q. B.) 337.)

And in equity it has been held that a party may proceed under s. 68 to assess compensation for damage sustained after the satisfaction of his primary claim, which could not have been foreseen: (*Lancashire and Yorkshire Railway Co. v. Evans*, 15 Bea. 332.)

Works may be executed before compensation made.

It is not unlawful for the company to execute works authorised by their act before paying compensation for injury arising from such execution. A plaintiff, who did not dispute the right of the company to widen a bridge in such a manner as to draw off water from a reservoir connected with his mill, was held not entitled to prevent the works proceeding until he had received compensation for the loss of water occasioned thereby: (*Hutton v. London and South-Western Railway Co.*, 18 L. J. (Ch.) 345.) See s. 6 of the Railways Clauses Act, *post*.

Notice.

(e) By s. 21, *ante*, the claimant is required to state "the particulars of his claim in respect of any such land." The object of the notice in each case is the same, and the same degree of particularity would seem necessary—*i.e.*, such as would enable the company to meet the just claim of the party by ascertaining the value of the land, offering him compensation accordingly. (See *per Cockburn, C. J., Healey v. Thames Valley Railway Co.*, 34 L. J. (Q. B.) 52; 11 L. T. N. S. 268.)

If compensation is claimed for consequential damage as well as for land taken, there should be a separate claim for each, (*R. v. Commissioners of Dudley Improvement Act*, 10 L. T. 372,) and the claim should state the full amount claimed, and not merely supply the means of calculating it: (*Falconer v. Aberdeen Railway Co.*, 15 Court of Sess. Cas. 352, decided on a section of the Scotch Land Clauses Act, similar to the present.)

Where claimant is a lessee for years.

Where a claimant is occupier under a lease for years, it is not sufficient to state in the notice that he holds under a lease: (*Ibid.*) But in a case of temporary interruption of traffic, where consequently it was unnecessary for the claimant to state the duration of his term, it was held that a tenant who held under a lease had sufficiently described himself as the "occupier": (*Cameron v. Charing Cross Railway Co.*, 33 L. J. (C. P.) 313.)

Mistake.

A mistake in the name of the company, which does not mislead, does not invalidate the notice: (*Eastham v. Blackburn Railway Co.*, 9 Exch. 758.)

Issue of warrant.

(f) Where the matter is not merely in negotiation, but the lands have been actually taken or injuriously affected, it seems that no notice need be given by the company to the claimant of their intention to cause a jury to be summoned: (*Railstone v. York, &c., Railway Co.*, 15 Q. B. 404; 19 L. J. (Q. B.) 464, (*dissentiente Coleridge, J.*); *Hayward v. Metropolitan Railway Co.*, 33 L. J. (Q. B.) 73. But see *Richardson v. South-Eastern Railway Co.*, 11 C. B. 154.) It would follow from this that the claimant, if he desires a special jury, will have no opportunity of requiring one unless he demands it in his original notice.

Mandamus.

The company may be compelled by mandamus to issue their war-

to the sheriff, even where the claimant has a remedy in equity: *s & 9 Vict. c. 18. v. Irish South-Eastern Railway Co.*, 1 Ir. L. R. 119; and see *Berby v. Metropolitan Railway Co.*, L. R. 2 C. P. 188; and the notes to s. 39, *ante*.)

In an action against a railway company under this section for the compensation claimed because of default by the company to summon a jury within twenty-one days, a plea "that the claim was a *bona fide* claim within the statute, but in fraud of the defendant, and without any reasonable cause," will not be allowed; but *C. J.*, disallowed it without prejudice to any application to disallow a plea framed on the case of *Wade v. Simeon*, 2 C. B. 548; 15 C. P. 114; (*Hooper v. Bristol Port Railway and Pier Co.*, 35 C. P. 299.)

It has been held that this provision of the statute incorporates Costs. In this section all the previous provisions as to the summoning of juries, including ss. 51 and 52, *ante*, which provide for the payment of the costs of an inquiry before a jury: (*South-Eastern Railway Co. v. Richardson*, 21 L. J. (C. P.) 122; 15 C. B. 810; *Railstone v. York, &c., Railway Co.*, *ubi supra*.) See s. 45 of 31 & 32 Vict. c. 19, in the Appendix.

The 68th section was held to be incorporated into an act passed for the Lands Clauses Act, and extending an act passed before that act: (*Lancashire and Yorkshire Railway Co. v. Evans*, 15 Bea. 332.)

It seems that the ordinary vendor's lien is enforceable in respect of unpaid compensation, notwithstanding the payment into Court of a sum of money under the 85th section; and in a late case, Lord Almon, M. R., referred it to Chambers to ascertain what was due to the plaintiff for principal, interest, and costs, directed a day to be fixed for the payment of what should be found due, and in default of payment ordered a sale of the land: (*Walker v. Ware, Hadham, Buntingford Railway Co.*, L. R. (Eq.) 195, 200; 34 L. J. (Ch.) 13 L. T. N. S. 517.)

But the same judge refused to make a similar decree in a case in which, though specific performance of an agreement, and an inquiry into the amount due, had been decreed in the cause, it was granted, on petition, under the liberty to apply, to enforce the vendor's lien, which had not in fact as yet been declared to exist, as it was urged upon the property: (*Attorney-General v. Sittingbourne and Swale Railway Co.*, 1 L. R. (Eq.) 636; 14 L. T. N. S. 92.) See also as to remedies for recovering unpaid compensation and purchase-money the notes to s. 85, *post*.

Incorporation of s. 68 in extension acts.

Lien for unpaid compensation.

Cannot be enforced until declared in a suit.

APPLICATION OF COMPENSATION.

And with respect to the purchase-money or compensation payable to parties having limited interests or prevented from making, or not making title, be it enacted as follows:—

LXIX. If the purchase-money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail,

Application of compensation.

Purchase-money payable to parties under disability amounting to £200 to be deposited in the bank (a).

3 & 2 VICT. c. 18. married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor, or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the bank, in the name and with the privity of the accountant-general of the Court of Chancery in *England*, if the same relate to lands in *England* or *Wales*, or the accountant-general of the Court of Exchequer in *Ireland*, if the same relate to lands in *Ireland*, to be placed to the account there of such accountant-general *ex parte* the promoters of the undertaking, (describing them by their proper name,) in the matter of the special act, (citing it,) pursuant to the method prescribed by any act for the time being in force for regulating moneys paid into the said courts; and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes; (that is to say,)

Application of moneys deposited.

In the purchase or redemption of the land-tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes; or

In the purchase of other lands, to be conveyed (*b*), limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled; or

If such money shall be paid in respect of any buildings taken under the authority of this or the special act, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct; or

In payment to any party becoming absolutely entitled to such money.

Title to the property not affected by payment into Court.

(a) The Court of Chancery will not, in consequence of property having been taken for a railway, allow the title to the property to be interfered with, the object of the act of Parliament being the manner in which the railway company shall

compensation to the owner of the property, but not to interfere at 8 & 9 Vict. c. 18. all with the title to that property, or to lay down any rule affecting the ownership of the property, or the manner in which the money to be given to the owner shall be engaged: (See *per* Lord Westbury, C., in *Clephane v. Magistrates of Edinburgh*, 4 M'Q. H. L. 603; 14 L. T. N. S. 278, in which the House of Lords refused to order the rebuilding of a church, which had been taken by a railway company, in a manner identical with the former edifice.)

A purchase made, before reference to the master, of lands "to be Purchase before settled to the like uses," is not within this section, and the costs of reference. Costs. such a purchase were refused: (*Ex parte Bouverie*, 5 R. C. 431.)

But where, for the express purpose of avoiding a reference to the Form of order master, a vicar applied for the investment of the money paid for part where no reference directed. of the glebe in a proposed purchase of land, the title having been approved by his counsel, an order was asked for and made for sale of the stock, and application of the money to the proposed purchase, and for a conveyance to the vicar of the land, to be held by him in the same manner as the lands taken by the company had been held: (*Ex parte Vicar of East Dereham*, 21 L. J. (Ch.) 677.)

With some hesitation Vice-Chancellor Knight Bruce made an order, on a tenant for life's petition, that if the title should be approved the conveyance should be settled, and the consols sold, and the money paid to the vendors: (*Ex parte Metherell*, 20 L. J. (Ch.) 629; *Re Hichin*, 1 W. R. 505.)

But Vice-Chancellor Turner refused to follow *Ex parte Metherell*, Practice as it appeared that the order made was not, as was intended, co-ex- explained. tensive with the prayer in that case, (see 16 Jur. 512 N.) and considered that the only order he could then make was for reference as to fitness and title, and to settle the conveyance, observing that the practice was that parties should then come back to the Court: (*Ex parte Duckle*, 16 Jur. 511.)

And in another case, Vice-Chancellor Turner, upon a petition for reinvestment, on an affidavit of the propriety of the proposed purchase, directed the registrar to make a note of the approval of the Court, the title to be submitted to the conveyancing counsel, and the matter to be mentioned again upon the certified opinion of the conveyancing counsel; and after having been re-submitted to him to draw the conveyance, to be again mentioned to the Court: (*In re Caddick*, 9 Ha. App. ix.; 22 L. J. (Ch.) 10.) For forms of orders see 10 Ha. App. xxxvi.; Tripp's Chancery Forms, 140.

In the last-cited case the petitioner was allowed to select from Particular con- the conveyancing counsel to the Court a particular one, to whom the veyancing matter should be submitted. But in *Re Martin* it was said that the counsel. Court would not make any order for that purpose: (17 Jur. 30; 22 L. J. (Ch.) 243.) By Gen. Ord. I., v. 5, however, the Court or a Judge in Chambers has a discretion to order a reference to any particular one of the conveyancing counsel.

The petition must not ask simply for a reinvestment in land, but Reinvestment must pray a reinvestment in a purchase, to be approved by a Judge subject to ap- in Chambers: (*Re Dunraven*, 10 W. R. 56.) proval of Judge in Chambers.

And the court will direct a reference only as to the actual purchase Reference not ex- proposed, not as to any future or other investment in case of the pro- tended to future posed purchase not being approved: (*Ex parte Pumfrey*, 4 R. C. 490.) purchases in case proposed purchase fail.

- 8 & 9 VICT. c. 18. (b) A conveyance having been drawn in blank as to the order to convey and for payment out, the proper mode of proceeding was declared to be that the engrossment should be prepared and ready for execution at the time of the application for the order, and that all but the dates and particulars of such order should be already filled up: (*Re Caddick*, 9 Ha. App. ix. ; 22 L. J. (Ch.) 10.)
- Conveyance drawn up in blank.
- Defective title. A petition to carry into effect a contract for the purchase of land, the title to which, previous to 1824, was not to be disclosed, was refused; but a reference as to title before that date was directed, with a further direction, if it should be for the benefit of the parties, to see whether a good title could be made according to the contract: (*Ex parte Lowe*, 19 L. T. 310.)
- Undertaking of petitioner to apply the fund in a purchase of land. The Court will not allow the fund deposited to be paid to the petitioner upon his undertaking to apply it in a purchase of land, but directs a reference for title: (*Ex parte Craven*, 17 L. J. (Ch.) 215;) and see as to misapplication of funds, *Great Northern Railway Co. v. Corporation of Lancaster*, 16 Jur. 677.
- Corporation lands. Meeting of free-men. Where corporation lands are taken, and the mayor, aldermen, and citizens pray for payment out, and for a scheme to be settled as to the fund, the Court will not make an order without the consent of the freemen of the town, if they are interested in the fund, and will direct a meeting of the freemen to be held for the purpose of obtaining their consent: (*Re Great Northern Railway Co.'s Act*, 16 Jur. 756; 6 R. C. 738; 21 L. J. (Ch.) 621.)
- Conversion. Money paid in under this section retains the qualities of real property, and descends to the heir.
- Felon's land taken: no conversion. In a case before Vice-Chancellor Kindersley, where the petitioner applied for payment out to him of his share of fund, which, upon his conviction as a felon, had been carried to the account of "the share of T. B., a convicted felon," the question arose as to whether there had been a conversion of the land, in which case the Crown would have been entitled. His Honour, in deciding that there had been no conversion, said: "It appears, then, upon the authorities, that when the circumstances of the case have been brought under the 69th section of the Lands Clauses Act, the money has been held to bear the character of realty; but if, on the other hand, the circumstances have brought the case under the 78th section of the Lands Clauses Act, then the money has been held personalty." In that case a jury had been summoned, and the money had been paid in under a section in a special act, similar to the present section: (*Re Harrop's Estate*, 3 Drew. 726; 26 L. J. (Ch.) 516; 3 Jur. N. S. 380.)
- No conversion where money should have been, but was not, paid in under s. 69. And where the company paid the interest of the purchase-money to the tenant for life, who had devised the estate as ultimate owner in fee, and the capital was not paid into Court until after his death, no conversion was held to have taken place, because the money should originally have been paid into Court under the section in the special act, corresponding to s. 69: (*Re Bagot*, 31 L. J. (Ch.) 772.)
- Trust for sale not exercised, but money paid in. Land settled with a trust for sale at the request of a husband and wife was taken, and the price fixed by jury, but paid into Court, in consequence of a supposed defect in the title. It was held that, notwithstanding that the sale was made under the compulsory

powers, and not under the trusts, the purchase-money might be 8 & 9 Vicr. c. 18. dealt with as if it had been paid in under the section of the special act, corresponding with the 69th section: (*Re Taylor's Settlement*, 9 Hare, 598.)

Real estate had been devised to a lady for life, with a remainder Conversion. to H. J. Cramer, defeasible upon an event which did not happen. The land was taken by the Manchester Improvement Commissioners, and the price paid in. The dividends were paid to the tenant for life until her decease. Upon the death of the remainderman, it was held that the estate passed to his heir-at-law, and was not converted, upon the principle that the money still remained impressed with the trust for reinvestment in other land: (*Re Stewart's Estate, ex parte Cramer*, 1 Sm. & G. 32; 16 Jur. 1063; 22 L. J. (Ch.) 369; and the same rule was followed in *Re Horner's Estate*, 5 De G. & Sm. 483; 7 R. C. 373; 22 L. J. (Ch.) 369.

In a case where an imbecile, who, previous to his imbecility, had Lunatic's land. made a will, not containing, however, any general devise of real estate, was served with notice to treat, but died before the price could be paid to him, and the company paid it into Court, no conversion was held to have taken place: (*Midland Counties Railway Co. v. Oswin*, 1 Coll. 80; 3 R. C. 497.)

Land was settled to the use of a lunatic in tail, with remainders Election. over. The land being taken by a railway company, the price was paid into Court. The lunatic died, and the next tenant in tail made a will not affecting the fund, of the existence of which she was ignorant. It was held that no conversion had taken place, as no conversion on her part to take the fund in any way had been expressed: (*Dirie v. Wright*, 32 Bea. 662.)

But in a similar case to *Midland Railway Co. v. Oswin*, cited above, where the testator had devised his real and personal estate to different persons, and at the time his land was taken he became imbecile, and the value was paid into Court, a conversion was held to have taken place, because it was thought right to consider the testator as having made a complete contract: (*In re East Lincolnshire Railway Act; Ex parte Flamank*, 1 Sim. N. S. 260.)

And where the landowner died before conveyance, although no Conversion binding contract within the Statute of Frauds had been come to, where landowner dies before binding contract made. Shadwell, V.-C., thought that the power given to the company by their act to take lands six months after notice, and to pay the money into Court, was sufficient; and as his Honour considered that the money had been properly paid in, he held that a conversion had been caused: (*Ex parte Hawkins*, 13 Sim. 569.)

A testator had agreed with a railway company to sell at £500 per Mere settlement acre whatever land they might require. After his death, a contract of price in case of more land being taken is no conversion. with the tenant for life under his will was entered into for five acres, and £2500 was paid into Court. It was held that no conversion had been worked by the former contract, as it only settled the price of the land, and was not a contract for purchase: (*Ex parte Walker*, 22 L. J. (Ch.) 888.)

In the case of an option to purchase, which is unaffected by the Option to purchase 69th section, the land retains the original character of real estate until the option is exercised, and consequently until that time no conversion will take place: (*Ex parte Hardy*, 30 Bea. 206.)

8 & 9 Vict. c. 18.

Payment to incapacitated persons by mistake.

Where misapplication feared.

Where the price of the land had been paid to the tenant in tail, and not into Court, but had been ascertained by arbitration, the Master of the Rolls directed the investment sought by him: (*Ex parte Earl of Abergavenny*, 4 W. R. 315.)

A railway company who bought corporation lands, having been, in consequence of disputes as to title, ejected from the land, paid the money to the corporation, and afterwards filed a bill, praying that the corporation might be ordered to pay in the money, as it was feared that they were about to misapply it. The corporation were thereupon ordered to pay into the bank a sum they admitted as having in their hands; but another part of the purchase-money having been invested on the security of certain local rates, was not included in the order: (*Great Northern Railway Co. v. Corporation of Lancaster*, 16 Jur. 677.)

Non-alteration of will devising land to an infant: conversion.

A conversion is effected in those cases in which a person after making his will in favour of an infant contracts with a railway company, and dies without altering his will. The executors, in such a case, were held entitled to the fund paid in, and also to the compensation for severance: (*In re Manchester and Southport Railway Co.*, 19 Bea. 365.)

Interest where money paid into private bank.

When the price of the property taken has been paid into a private bank, there to remain until the master approved the contract for a purchase as a re-investment, the company is bound to pay interest upon the fund so paid in: (*Chambers v. White*, 14 Jur. 1129.)

Agreement to pay interest.

A railway company agreeing to pay interest upon the purchase-money until "the completion of the purchase," and afterwards paying the money into Court under this section, will, if the title be accepted, be bound to pay interest up to the time of payment into Court, but not longer: (*Lewis v. South Wales Railway Co.*, 10 Hare, 119; 22 L. J. (Ch.) 209.)

Acquiescence.

But if the company, by acquiescence, admit their liability to a claim for interest until re-investment of the purchase-money, such interest will be allowed against them, notwithstanding that the money has been paid in under s. 69: (*Ex parte Earl of Hardwicke*, 1 De G. M. & G. 297.)

Specific performance. Interest.

It has been held in Ireland, that, since upon an ordinary purchase interest is payable when there is delay on the part of the purchaser, on a bill for specific performance, a railway company must pay interest from the time of taking possession until completion: (*Blount v. Great Southern and Western Railway Co.*, 2 Ir. Ch. Rep. 40.)

Ward of Court.

Payment in, under this section, of money belonging to an infant, whose land has been taken by a railway company, does not constitute the infant a ward of Court: (*Ex parte Brewer*, *In re Wills, Somerset, and Weymouth Railway Co.*, 13 W. R. 959.)

Right of pre-emption not affected by s. 69.

A right of pre-emption given by will over estates taken by a railway company, is not overridden by the provisions of the Lands Clauses Act. This was decided in a case where land had been devised to a widow for life, with remainder on trust for sale, but with a right for one of testator's sons to buy the estate for £450. The price paid by the railway company was £882, to which, on payment of the £450, the son was held entitled: (*Re Cant's Estate*, 4 De G. & J. 503, overruling 1 Giff. 12.)

And where a testator directed his real estate to be offered to his children successively at a valuation, but the option was never exercised, and the estate was taken by the corporation of London, the question arose as to whether the money paid in belonged to the heir-at-law or the next of kin; the Master of the Rolls held that until the option to purchase had been exercised, the estate remained in the position of realty; and as all the children had not yet attained twenty-one, and the option might therefore still be exercised, it was considered necessary to wait until the youngest attained that age, the income in the meantime to be paid to the heir-at-law of the testator: (*Ex parte Hardy*, 30 Bea. 206.)

Option to purchase at a valuation.

Money paid into Court by a railway company for lands purchased from a charity, may on petition be paid out, without the certificate of the Charity Commissioners under s. 17 of the "Charitable Trusts Act, 1853," (16 & 17 Vict. c. 137): (*Re Lister's Hospital*, 6 De G. M. & G. 184, overruling *In re London, Brighton, and South Coast Railway Co.*, 18 Bea. 608.)

Consent of Charity Commissioners.

Re Lister's Hospital was expressly followed by the Master of the Rolls in *Re St Giles, &c., Volunteer Corps*, 25 Bea. 313; 27 L. J. (Ch.) 560.

In certain applications, however, under the Trustee Acts and Private Charity Acts, the certificate of the commissioners is still apparently required. See *In re Skeat's Charity*, 25 L. J. (Ch.) 49; 1 Jur. N. S. 1037; *Re Bingley Free School*, 2 Drew. 283.

Where required.

The fiat of the Attorney-General under Sir Samuel Romilly's Act, (52 Geo. III. c. 101,) is not required on a petition for re-investment in the redemption of land-tax on other charity lands: (*In re London, Brighton, and South Coast Railway Co.*, 18 Bea. 608.)

Fiat of Attorney-General.

The consent of the Ecclesiastical Commissioners to a petition by a bishop for the application of a fund in Court, in buying up a leasehold interest in other property belonging to the see, is not required: (*Ex parte Bishop of London*, 2 De G. F. & J. 14; 6 Jur. N. S. 640.)

Consent of Ecclesiastical Commissioners.

The consent of the Ecclesiastical Commissioners may, under s. 10 of the 23 & 24 Vict. c. 59, be signified by affixing their common seal to a copy of the petition: (*Ex parte Rector of Twyford*, 1 W. N. 126.)

How signified, 23 & 24 Vict. c. 59, s. 10.

The 7th section of the 23 & 24 Vict. c. 59, extends to college property; the commissioners, therefore, have power to grant a charge by way of annuity to an incumbent of a rectory of which a college is the impropiator, for which purpose the Court will order a transfer to the commissioners of stock representing money paid in by a railway company to the account of the incumbent: (*Ibid.*)

Grants of annuities by commissioners, s. 7.

The commissioners will not formally recommend the grant of an annuity until the benefaction has been actually paid to their account, and a transfer is therefore previously requisite: (*Ibid.*)

A petitioner having already paid a certain sum for the redemption of land-tax, was allowed the same out of the fund in Court: (*Ex parte Lord Northwick*, 1 Y. & C. 166; *Ex parte Beddoes*, 2 Sm. & G. 466.)

Redemption of land-tax.

And a corporation will be allowed to apply part of the money deposited for the same purpose: (*In re London, Brighton, and South Coast Railway Co.*, 18 Bea. 608.)

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8 & 9 Vict. c. 18.	Under Sir Samuel Romilly's Act, (52 Geo. III. c. 101,) the petition is required to be signed by two individuals, and a corporation and an individual so signing would not be sufficient: (<i>Ibid.</i>)
Signature of petition.	An application for the investment of part of the fund paid in for paying off quit-rent was granted: (<i>Ex parte Studdert</i> , 6 Ir. Ch. Rep. 53.)
Quit-rent.	It is provided by certain Enclosure Acts that the expense of fencing in, enclosing, &c., allotments made under them shall be charged upon the respective allotments; but in some cases, where the allotment has been subsequently taken by a railway company, the Court has allowed the fund paid in to be applied towards the payment of those expenses: (<i>Ex parte Lockwood</i> , 14 Bea. 158, following <i>Re Queen's College</i> , 14 Bea. 159 n.)
Expenses of enclosing, &c., allotments under Enclosure Acts.	It seems that a tenant for life is not entitled to have the instalments of money advanced, under the Public Money Drainage Acts, repaid out of the <i>corpus</i> of the money in Court: (<i>Ex parte Studdert</i> , 6 Ir. Ch. Rep. 53.)
Repayment of advances under Drainage Acts.	But the drainage of glebe lands was held to be a proper investment of the fund in Court: (<i>Ex parte Rector of Queen Camel</i> , 11 W. R. 503.)
Drainage of glebe lands.	Upon the petition of a tenant for life to have part of the sum in Court paid to a mortgagee, and the residue invested in bank annuities, the company would not have to pay the costs of appearance of the mortgagee since this mode of application of the fund is purely voluntary on the part of the tenant for life: (<i>Re Yeates</i> , 12 Jur. 279; and the notes to s. 80, <i>post.</i>)
Payment to mortgagee.	Leases of property of which the reversion is in the persons interested in the funds in Court, have been treated as "incumbrances" under this section; and such persons have consequently been permitted to apply the funds in procuring the surrender of the leases: (<i>Re Manchester and Sheffield Railway Co.</i> , 21 Bea. 162; 2 Jur. N. S. 31; <i>Ex parte Bishop of London</i> , 2 De G. F. & J. 14; 6 Jur. N. S. 640.)
Surrender of leases.	And money in Court, representing leasehold property taken, was ordered to be laid out in the purchase of the reversion of other leasehold property belonging to the petitioner: (<i>Re Brasher</i> , 6 W. R. 406.)
Purchase of reversion.	It was held that, as all the lands of a corporation are held for the same municipal purposes, money raised for such purposes might be discharged with money paid in for lands not subject to the charge: (<i>Ex parte Corporation of Cambridge</i> , 6 Ha. 30; 5 R. C. 204; 13 Jur. 450.)
Charges on corporation lands.	And similarly, where certain property was taken, and certain other property, consisting of houses in a very dilapidated condition, and condemned under the Metropolitan Buildings Act, the tenant for life was considered entitled to recoup herself out of the funds in Court, in respect of what she had paid for reinstating the houses, and for fees, declared under that act to be a charge upon the property condemned: (<i>Re Davis</i> , 3 De G. & J. 144; 27 L. J. (Ch.) 712; 4 Jur. N. S. 1029; 6 W. R. 844.)
Repair of condemned houses.	An equity of redemption is not a proper investment under this section: (<i>Ex parte Craven</i> , 17 L. J. (Ch.) 215.)
Equity of redemption.	Money paid in under this section may be employed in the enfranchise-
Enfranchise-	

chisement of other copyhold lands belonging to a corporation whose land has been taken : (*Re Cheshunt College*, 1 Jur. N. S. 995 ; 3 W. R. 638 ; *Dixon v. Jackson*, 25 L. J. (Ch.) 588.)

Leaseholds subject to the provisions of a settlement were taken by a dock company ; upon the report of the master approving the proposed purchase, the money was ordered to be reinvested in copyholds of inheritance : (*Re Liverpool Dock Act, Ex parte Coyte*, 1 Sim. N. S. 202.)

In another case, however, it appearing that the greater part of the land taken was copyhold, the purchase-money in Court was permitted to be invested in other copyholds, part of the same manor as those taken : (*Re Browne*, 6 R. C. 733 ; 16 Jur. 158.)

And the proceeds of leaseholds were, in another case, allowed to be applied in buying the reversion of other leaseholds : (*In re Brasier*, 6 W. R. 406 ; *Ex parte Corporation of Sheffield*, 21 Ben. 162 ; 2 Jur. N. S. 31 ; *Ex parte Corporation of London*, L. R. 5 Eq. 418.)

Vice-Chancellor Knight Bruce ordered the proceeds of freehold property taken to be invested in certain freehold and copyhold property, but observed that he would not have done so, had not the master reported the purchase as being for the benefit of all parties : (*In re Conn*, 15 Jur. 3 ; 19 L. J. (Ch.) 376.) But the Lords Justices refused to carry the principle in *Re Conn* so far as to allow an investment of the purchase-money of freeholds in a long leasehold, although subject only to a nominal rent, payment of which had not been made for a long time ; and although a search had been made for the reversioner, and he was not to be found : (*Ex parte Macaulay*, 23 L. J. (Ch.) 815 ; 2 W. R. 667 ; 23 L. T. 263.)

It seems that leaseholds are a proper investment for the proceeds of leaseholds : (*Ex parte Barrett*, 15 Jur. 3 ; 19 L. J. (Ch.) 415.)

An order was made for payment to a vicar of the dividends of a fund paid in for certain glebe lands taken by a railway company. He then presented a petition that, in pursuance of an arrangement already made, the corpus might be apportioned amongst certain chapels of ease under 1 & 2 Vict. c. 106. The Court refused to sanction the arrangement, as that act applied to the dividends only, and not to the capital : (*Ex parte Vicar of Kidderminster*, 7 W. R. 482.)

It seems that where the site of a church has been taken for a railway, although the money paid in will be applicable to the rebuilding of the church upon another site, still the new edifice need not be identical in structure or size with the former church : (*Clephane v. Magistrates of Edinburgh*, 4 M. & C. H. L. 603.)

It seems that, strictly, "building" is not a proper investment under this section, and although there are several decisions authorising such an investment, still the better opinion appears to be, that the Court of Chancery has no jurisdiction for this purpose.

The master having reported that certain buildings were necessary, a sum of £450, in Court, was ordered to be paid out to a trustee for their erection : (*Ex parte Shaw*, 4 Y. & C. (Ex.) 506.)

And this case was followed, where it was desired to invest, in rebuilding a farmhouse, which was in a ruinous state, a fund paid into Court under a local act, as the produce, by way of rent, of part

ment of other lands.

Produce of leaseholds invested in copyholds.

Of copyholds in copyholds.

Of leaseholds in the reversion of other leaseholds.

Of freeholds in freeholds and copyholds.

Of leaseholds in leaseholds.

Chapels of ease under 1 & 2 Vict. c. 106.

Rebuilding churches.

Building.

When certified to be necessary by master.

Rebuilding farm-houses.

- 8 & 9 Vict. c. 18. of the glebe, let under the authority of the act, upon mining leases
(*Re Wigan Glebe Act*, 3 W. R. 41.)
- Labourers' cottages. So also, a tenant for life having built some labourers' cottages, was ordered to be paid the amount of her outlay upon the certificate of the chief clerk, that they had been actually built: (*Re Wight*, 6 W. R. 718.)
- Arrest of parties interested. A similar order was made upon an affidavit, that all parties interested assented to this mode of reinvestment: (*Re Partington*, 11 W. R. 160; 7 L. T. N. S. 552; *Ex parte Rector of Holywell*, 2 Dr. & Sm. 463; 11 Jur. N. S. 579.)
- Where investment on building not allowed. Completing buildings already purchased out of fund in Court. On the other hand, an order having already been made for part of the sum in Court to be invested in the purchase of a farm, a second petition, asking that a further sum might be paid out for the purpose of completing some buildings on the farm, and of erecting new ones, was refused, as not being within any part of this section: (*Re Rudyerd*, 2 Giff. 394; 6 Jur. N. S. 816; 3 L. T. N. S. 232.)
- Certificate of an architect as to necessity for building. In another case, the Master of the Rolls having declined to make an order for the application of the fund in Court, to the erection of cottages, and desiring that the matter might be mentioned to the Court above, Lord Justice Turner (*dissentiente* Lord Justice Knight Bruce) made the order, but with the proviso that no part of the money should be paid out of Court until the architect certified that the whole of the buildings were completed: (*Re Dummer*, 2 De G. J. & S. 515; 11 Jur. N. S. 615.)
- Investment of corporate funds in building. But the Lords Justices, in a recent case, (*dubitante* Sir J. L. K. Bruce, L. J.,) refused to make an order for the investment of the fund in Court, in building offices under the powers of the Liverpool Improvement Act, 1858, as there were no special circumstances necessitating such an investment; and, since the corporation are trustees of the corporation property, they could not be allowed to change property yielding income into property which would yield none: (*Ex parte Corporation of Liverpool*, L. R. 1 Ch. App. 596.)
- Lands of greater value than fund in Court. The petitioner may, in the same petition, apply for the investment of a larger sum than that in Court, but the extra costs occasioned thereby will not be allowed against the company: (*Ex parte King's College, Cambridge*, 5 De G. & Sm. 621; and see *Ex parte Craven*, 17 L. J. (Ch.) 215; see further on this subject the notes to s. 80, *post*.)
- Application of small balances for lasting improvements. A balance of £30 after reinvestment of the bulk of the fund was ordered to be paid to a petitioner, an administrator, not, as asked, for repairs to the purchased premises, but for "lasting improvements:" (*Ex parte Barrett*, 15 Jur. 3; 19 L. J. (Ch.) 415; *Re Hitchin*, 1 W. R. 505; *Ex parte Perpetual Curate of Chelford*, 1 W. N. 163.)
- Limitation of amount. But Parker, V.-C., refused to allow a residue amounting to £52 to be employed in a similar manner, and thought that no greater sum than £20 could be so paid out: (*Re Bateman*, 21 L. J. (Ch.) 691.)
- Small balance in hand after purchase made. So on a petition for reinvestment, any residue remaining after the purchase ordered, provided it should be less than £20, was directed to be paid to the tenant for life: (*Re Lord Egremont*, 12 Jur. 618.)
- But a petition for payment out to a vicar of a fund in Court amounting to £200, on his undertaking to lay it out in a certain purchase for £180, was refused, and it was further ordered, that upon the completion of the purchase, the balance of £20 should be

invested, and the dividends paid to the vicar for the time being : 8 & 9 VICT. c. 18. (*Ex parte Vicar of Bredicot*, 5 R. C. 209 ; 17 L. J. (Ch.) 414.)

(3.) An order was made for carrying into effect an agreement for re-building certain almshouses which had been interfered with in consequence of a tunnel having passed beneath them : (*Ex parte Thorner's Charity*, 12 L. T. 266.)

And a company having by the proximity of their works injured some school buildings, an order went to pay the amount of certain alterations contemplated to the minister and churchwardens, upon their undertaking to apply it to that object : (*Re Chelsea Water-Works Co.*, 28 L. T. 173.)

It was, however, in a case where a railway company had taken a building formerly used as a peat-house, referred to the master whether the rebuilding of a house, to be used for that purpose, was advisable : (*Ex parte Churchwardens of Bicester*, 5 R. C. 205.)

And it was also referred to the master to ascertain what part of a sum paid in ought to be paid to the tenant for life for a new road from his residence to the railway station, and for building lodges thereon : (*Re Duke of Marlborough's Estates*, 13 Jur. 738.)

Where arable land had been severed in such a manner as to render the erection of new farm-buildings and a homestead indispensable, a provisional contract by the tenant for life for their erection was confirmed, and the fund in Court applied for the purpose of carrying it into effect : (*Ex parte Melward*, 27 Bea. 571 ; 29 L. J. (Ch.) 245 ; 6 Jur. N. S. 478.)

When it appears that "lasting improvements" are contemplated, courts of equity look upon the investment of the moneys paid in in buildings to be erected with that view with more favour.

Thus an outlay on the improvement of certain almshouses was sanctioned : (*Re Buckinghamshire Railway Co.*, 14 Jur. 1065.)

And, expressly following this case, an order was made for payment out for the purpose of rebuilding a vicarage : (*Re Incumbent of Whitfield*, 1 J. & H. 610 ; 7 Jur. N. S. 909 ; 30 L. J. (Ch.) 816 ;) and a rectory : (*Ex parte Rector of Welbourn*, 3 W. N. 104.)

So also where certain houses had been condemned by the commissioners under the Metropolis Buildings Act the tenant for life was, out of money paid in for certain other property, permitted to reimburse herself the amount she had paid for fees under that act, and for rebuilding the premises : (*In re Davis*, 3 De G. & J. 144 ; 27 L. J. (Ch.) 712 ; 6 W. R. 844.)

And certain charity land having been taken the trustees were permitted to apply the price which had been paid into Court in the improvement of the water supply of the town in which the charity was situate : (*Re Lathropp's Charity*, 1 L. R. (Eq.) 467 ; 14 W. R. 326 ; 13 L. T. 784.)

Upon an application for payment out of a share, to which the petitioner is absolutely entitled, it is unnecessary to serve the parties interested in the other shares ; and it was said that the company, by its appearance, must be considered as protecting the interests of all other parties : (*Re Midland Railway Co.*, 11 Jur. 1095 ; *Re East*, 2 W. R. 111 ; 22 L. T. 197.)

Where it appeared that, owing to a difficulty arising upon a will, it was impracticable to pay out to a person absolutely interested his

Rebuilding
almshouses.

Alterations in
schools.

Reference as to
rebuilding.

New roads and
lodges.

Severance. New
buildings.

Lasting improv-
ments.

Almshouses.

Rebuilding
vicarage.

Repairing con-
demned houses.

Improvement of
water supply of
the town.

Service of other
parties entitled
to shares of fund
in Court.

Payment to
executor.

- 8 & 9 VICT. c. 18 share of the fund in Court, an order was made for payment of it to the executor: (*Re Clarke*, 6 W. R. 812.)
- Pending suit And it has been held that a party interested in an estate, concerning which an administration suit is pending, may apply to have his share of the fund paid in by a railway company, in respect of part of that estate, carried over to the credit of the cause: (*Melling v. Bird*, 17 Jur. 155; 22 L. J. (Ch.) 599.)
- Payment to trustees. The Court refused to order payment to the trustees of a will, bequeathing leaseholds to a woman for life, and then upon trust for sale, but directed the money paid in by the railway company to be invested in the ordinary way: (*Re Horwood*, 3 Giff. 218.)
- Consent of Charity Commissioners. But see *Re East*, 2 W. R. 111, where the fund was, upon the death of the tenant for life, paid out to trustees for sale, without even serving the remaindermen.
- Disentailing deed. The trustees of a charity, however, not having a power of sale, cannot have the fund invested, and transferred to them, without the consent of the Charity Commissioners: (*Re Faversham Charities*, 10 W. R. 291; 5 L. T. N. S. 787.)
- In strictness upon the payment out of money which represents land settled in tail, the tenant in tail could not receive it, without executing a deed disentailing the money. But several exceptions have been made to the rule, although some judges have refused to countenance a departure from it.
- Where the fund was under £200 an order was made for payment out without the formality of a disentailing deed: (*Sowry v. Sowry*, 6 Jur. N. S. 337; 8 W. R. 339; 2 L. T. N. S. 79; and see *Re South-Eastern Railway Co.*, 30 Bea. 215.)
- Other cases in which the same course was taken are, *Re Holden*, 1 H. & M. 445; 10 Jur. N. S. 308; and *Re Watson*, 10 Jur. N. S. 1011, in which last-mentioned case the Lords Justices observed, that the practice was very convenient, although they could hardly conceive how former judges had consented to dispense with the disentailing deed.
- However, in a previous case, where the fund was £900, belonging to two tenants in common in tail in gavelkind, Vice-Chancellor Kindersley thought that the deed was necessary, and that the only cases in which it was intended to dispense with it are those (like *Sowry v. Sowry*, *ubi supra*) where the fund is very small: (*Re Tylden*, 9 Jur. N. S. 942; and see *Re Field*, 8 L. T. N. S. 722.) But his Honour, in a very recent case, upon the authority of *Re South-Eastern Railway Company*, ordered the payment out of £600 to a tenant in tail without requiring the execution of a deed: (*Notley v. Palmer*, 1 L. R. Eq. 241; 11 Jur. N. S. 968; 14 W. R. 170; 13 L. T. N. S. 647.)
- Married woman's estate tail. A husband was allowed to receive his wife's share of a fund in Court paid in, in respect of an estate tail in which she was interested, without a disentailing deed being executed by her, her consent in Court only being required: (*Re Tyler*, 8 W. R. 540.)
- Examination. In an earlier case, however, the wife's examination, under 7 Geo. IV. c. 45, was considered necessary: (*Re Silcock*, 3 Russ. 369.)
- A married woman was also examined, and her consent taken as to her election to take a fund in Court as money, and the payment of it to her husband: (*In re Worthington*, 16 Dec. 1853, B. 218; 9 W. R. 769, n., cited Seton on Decrees, p. 662.)

Petition for Payment out—Interim Investment. 217

No acknowledgment under such circumstances, but an examination will be still required: (*Re Hayes*, 9 W. R. 769.)

But in a case where the petition asked for the payment of a small sum, belonging to a married woman, to a mortgagee, the order was made without acknowledgment or examination: (*Pollock v. Birmingham, Wolverhampton, &c., Railway Co.*, 11 Jur. N. S. 7; 11 L. T. N. S. 663; 13 W. R. 401.)

LXX. Such money may be so applied as aforesaid upon an order of the Court of Chancery in *England* or the Court of Exchequer in *Ireland*, made on the petition (a) of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order (b), be invested by the said Accountant-General in the purchase of three *per centum* consolidated or three *per centum* reduced bank annuities, or in Government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

(a) When the special act incorporates the Lands Clauses Act, the petition should be entitled in the matter of the Lands Clauses Act, as well as in the matter of the special act: (*Re Clarke*, 10 L. T. N. S. 366.)

There are two conflicting decisions as to whether it is necessary to set out in the petition any of the sections of the Lands Clauses Act. In *Ex parte Osbaldiston*, (8 Hare, 31,) a mere reference to the act was considered sufficient; in *Re Lilley*, (17 Sim. 110,) it was considered necessary to set out the provisions under which the parties proceeded. Where a private act was set out, it was referred to the master to ascertain what unnecessary matter had been inserted: (*Haire v. Lovitt*, 12 L. T. 306.)

The uniform practice now is not to set out any part of the act, but merely to refer to the sections, giving the Court the jurisdiction under which the petition is presented.

The proper course for obtaining the dividends of the fund paid under a 69, is by petition under this section: (*In Re Clarke*, 6 W. R. 812.)

And this is the rule, although only a part of the fund is dealt with by the petition; and a new petition might consequently be necessary for each succeeding payment out of other shares: (*Ibid.*)

It has, however, been considered sufficient, under such circumstances, for a single application to be made to the Court in the first instance, future orders being obtained in Chambers: (*Re Hargrave*, 23 L. T. 139; *Re Dunraven*, 10 W. R. 56; 5 L. T. N. S. 523.)

And where an order has been made for payment of dividends to an incumbent, his successor was allowed to apply in Chambers for payment to him: (*Ex parte Incumbent of Guilden Sutton*, 8 De G. M. & G. 380; 2 Jur. N. S. 793.)

s & 9 Vic. c. 18.

Acknowledgment.

Order for application and investment meanwhile.

Title of the petition.

Setting out clauses of the act in the petition.

Present practice.

Must proceed by petition.

Although only part of fund dealt with by the petition.

When orders will be made in Chambers.

Incumbent.

- 8 & 9 VICT. c. 18. The correct order in such a case, however, seems to be for payment of the dividends, on the petition of an archbishop upon the death of his predecessor, as was done in one case, to the archbishop, and afterwards to the archbishop for the time being : (*Ex parte Archbishop of Canterbury*, 2 De G. & Sm. 365.)
- Archbishop.
- Death of petitioner before conclusion of reference for title. Where the petitioner dies before the conclusion of a reference for title, his successor may, it seems, if he consent to the purchase, proceed without a supplemental order : (*Ex parte Rector of Lea*, 21 L. J. (Ch.) 776.)
- Affidavit of title. On a petition by a tenant for life for payment of dividends, an affidavit of title is not considered necessary, since the order of the Exchequer, dated the 4th of July 1828, upon which the practice was founded, applies only to the *corpus* of the fund : (*In re Baroness Braye*, 9 Hare, App. vii. ; 22 L. J. (Ch.) 285.)
- Sufficiency of affidavit. The affidavit of one of the mortgagees, who prayed for payment to them of the fund in Court, that he knew of no other right or claim, was held sufficient : (*In Re Vale of Neath Railway Act, Jersey v. Jersey*, 1 W. N. 78.)
- Annuitants are not proper parties to present the petition. An annuitant was not considered entitled to present a petition under this section for the dividends of the fund in Court, the right being confined to the person who would have been entitled to the rents and profits if the property had not been taken : (*Ex parte Back*, 2 Y. & J. 386 ; see also *Re Marriage*, 9 W. R. 777 *post.*)
- Where allowed. But upon the undertaking of the annuitants never to proceed for their annuities against any part of the land taken, the Court, upon the petition of the tenant for life and the annuitants, ordered payment of the dividends to them : (*In Re Pedley*, 1 Jur. N. S. 654.)
- Disputed title. Although a question had arisen as to what parties should join in the conveyance to the company, the owner of the inheritance was held entitled to receive the dividends : (*Ex parte Cofield*, 11 Jur. 1071 ; *Re Wrey*, 11 Jur. N. S. 296.)
- Defective title. See also on this point of defective titles the notes to s. 76, (*post.*) and the cases *Re Perry*, 1 Jur. N. S. 917, and *Re Sterry*, 3 W. R. 561.
- Conveyance *pro tanto*. Where the title as to part only of the hereditaments taken was shown, the order made was, that a conveyance of such part should be made, and the dividends of the whole fund paid to the tenant for life, but that no payment of the *corpus* should be made without notice to the company : (*Re Perks*, 1 Sm. & Giff. 545.)
- Trustees and remaindermen. Trustees and remaindermen approving a purchase, should not appear as respondents : (*Wilson v. Foster*, 26 Bea. 398 ; 7 W. R. 172 ; 5 Jur. N. S. 113 ; 23 L. J. (Ch.) 410.)
- Change of parties interested. And the appearance of any persons entitled in remainder is unnecessary : (*Re Browne*, 1 De G. M. & G. 295 ; 6 R. C. 733 ; 21 L. J. (Ch.) 251.)
- Order to pay dividends to tenant for life and his executors. Upon a petition by the executrix of a deceased lessee, and the surviving lessee of leasehold property, taken for railway purposes, to have the fund in Court paid to the husband of the executrix and the surviving lessee, the company need not be served : (*Ex parte Hordern*, 2 De G. & Sm. 263.)
- Where an order, obtained by a tenant for life, should provide for the payment of the dividends to his executors, an order for payment of the last dividend due before the death of a tenant for life,

to the executors, was made in a recent case : (*Ex parte Straight*, 38 & 9 VICT. c. 18. W. N. 104.)

As to the form of the order :—

Upon the production of precedents from the Registrar's book, Sir J. L. Knight Bruce, V.-C., made an order for payment of the dividends of consols, to any two of the present trustees of a charity, or any two of the trustees for the time being : (*In re Collins' Charity*, 20 L. J. (Ch.) 168.)

And an order was made in another case, for payment "to two trustees or either of them : " (*In re Clinton*, 6 Jur. N. S. 601 ;) and to the trustees "or one of them : " (*In re Coulson*, 2 W. N. 233.)

The terms of a charity trust, vesting the property in a trustee, upon trust to permit the rector and churchwardens of the parish for the time being, and certain other trustees, to receive the rents for the augmentation of the charity, the order went for payment to the rector for the time being, for the purposes of the charity : (*Re Davenant's Charity*, 2 W. R. 344.)

On a petition for investment and payment of dividends to certain churchwardens and overseers, the order was to pay the dividends to the vicar, or to the churchwardens and overseers, but that if the vicar received them, he should pay over the same to the churchwardens and overseers : (*Ex parte Churchwardens of Bicester*, 5 R. C. 702.)

A petition by a tenant for life, for an interim investment on a mortgage of real estate, was referred to the master, who not reporting it for the benefit of the parties, the petition was refused : (*Ex parte Franklyn*, 1 De G. & Sm. 528 ; 5 R. C. 206.)

Upon a petition for investment in Exchequer bills, the Court observing that this kind of security was not always to be obtained, made the order for investment in any of the Parliamentary stocks, appointed by the Accountant-General, or in Exchequer bills from time to time as the parties thought fit : (*Re Manchester, Huddersfield, and Great Grimsby Railway Co.*, 4 R. C. 204.)

A guardian *ad litem* should be especially appointed to an infant appearing for investment of trust funds in which he is interested : (*Re Duke of Cleveland's Estate*, 1 Dr. & Sm. 46 ; 29 L. J. (Ch.) 530.)

This had been done in a previous case, where the infant respondent was of unsound mind : (*Re Greaves*, 23 L. T. 53.)

And the appointment will be made without a commission being issued, but simply an affidavit : (*Ibid.*)

LXXI. If such purchase-money or compensation shall not amount to the sum of two hundred pounds and shall exceed the sum of twenty pounds, the same shall either be paid into the bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled ; and in

For payment to trustees, "any two of the present trustees, or any two of the trustees for the time being"

"To the two trustees or either of them."
"Or one of them."

To the rector for the purposes of a charitable trust.

To churchwardens and overseers.

Interim investment mortgage.

Exchequer bills.

Guardian ad litem to an infant petitioner.

Infant of unsound mind.

Evidence of lunacy.

Sums from £2 to £200 to be deposited or paid to trustees (a.)

8 & 9 Vict. c. 18. case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned application of the moneys shall not be made unless the promoters of the undertaking approve thereof and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the bank, but it shall not be necessary to obtain any order of the Court for that purpose.

Payment of a balance to trustees.

(a) A balance of £70, after payment of the purchase-money for an estate selected for the reinvestment of the fund in Court, was ordered to be paid to two trustees, nominated by the tenant for life: (*Re Kinsey*, 1 N. R. 303.)

Sums not exceeding £20 to be paid to parties (a).

LXXII. If such money shall not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit, or in case of the coverture, infancy, idiocy, lunacy, or other incapacity of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, committees, or trustees of such persons.

Payment of a balance not exceeding £20 to tenant for life.

(a) Payment of the balance remaining out of the fund paid in by a railway company, provided it did not exceed £20, was ordered to be made to the tenant for life, for his own use: (*Re Lord Egremont*, 12 Jur. 618.)

Small balance after purchase in hands of petitioner to be invested.

But, in another case, the Court refused to allow the whole sum, which amounted to £200, to be paid to the petitioner, upon his undertaking to carry into execution a proposed purchase for £180; and the balance was directed to be invested, and the dividends paid to the vicar for the time being: (*Ex parte Vicar of Bredicot*, 5 R. C. 209; 17 L. J. (Ch.) 414.)

In the notes to s. 69 (p. 214, *supra*) will be found several cases where small sums have been paid out to a tenant for life for lasting improvements.

All sums payable under contract with persons not absolutely entitled to be paid into the bank.

LXXIII. All sums of money exceeding twenty pounds, which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him, absolutely for his own benefit, shall be paid into the bank or to trustees

in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for, or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the bill (a) authorising the taking of such lands, but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: Provided always, that it shall be in the discretion (b) of the Court of Chancery in *England* or the Court of Exchequer in *Ireland*, or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

(a) Sums paid in ostensibly as compensation for damage, but, in fact, as would appear from the contract, or from the excessive amount of such sums, as a consideration for the withdrawal of opposition to the bill, or paid to the tenant for life on that account, are not the property of such tenant for life, but are to be held by him as a trustee for the inheritance, he receiving the dividends only during his life. Thus, where a sum of money was by agreement paid to the tenant for life, in consideration of the withdrawal of his opposition, and for making new roads, rendered necessary in consequence of the works, and a further sum as the value of the lands taken, an inquiry was directed as to how much of the former sum would be wanted for the roads, and it was ordered that the remainder should remain in Court for the benefit of the inheritance: (*Re Duke of Marlborough's Estates*, 13 Jur. 738.)

And money simply paid to the tenant for life for such consideration is subject to the same rule: (*Pole v. Pole*, 2 Dr. & Sm. 420; *Earl of Shrewsbury v. North Staffordshire Railway Co.*, 1 L. R. (Eq.) 603, 608.)

Under the Copyhold Act, 1852, (15 & 16 Vict. c. 6.) and the Copyhold Enfranchisement Act, 1858, (21 & 22 Vict. c. 94.) certain sums are payable to the lord of the manor in respect of fines and other payments, upon a compulsory enfranchisement; but it has been decided that upon an enfranchisement under s. 95 of the Lands Clauses Act, (post,) no such sums are payable, and, consequently, that if the tenant for life have bargained for payment of them, he holds the

Sums paid in in consideration of withdrawal of opposition to bill.

Or paid to tenant for life.

Fines under the Copyhold Act.

8 & 9 Vict. c. 18. money so received as trustee for the inheritance : (*Re Wilson*, 2 J. & H. 619 ; 9 Jur. N. S. 1043 ; 32 L. J. (Ch.) 191 ; affirmed on appeal, 32 L. J. (Ch.) 193.)

Where the discretion of the Court will be exercised.

(b) Under the discretionary power given to the Court of Chancery under this section, a sum of £30 out of the fund in Court was allowed to be paid to a rector for his own use, in respect of injury and inconvenience occasioned by the taking of his glebe : (*Ex parte Rector of Little Steeping*, 5 R. C. 207.)

Notice to remaindermen.

The Court of Chancery recently allowed a small sum of £40, paid in in respect of injury and inconvenience sustained by the tenant for life, over and above the amount of the price of the land taken, to be paid to the tenant for life ; but required that the remaindermen should be communicated with before the order should be made : (*Re Collis's Estate*, 14 L. T. N. S. 352.)

Court of Chancery may direct application of money in respect of leases or reversions as they may think just (a).

LXXIV. Where any purchase-money or compensation paid into the bank under the provisions of this or the special act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery in *England* or the Court of Exchequer in *Ireland*, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Mode of adjustment of leasehold interests.

(a) In the adjustment of leasehold interests under this section, the Court of Chancery has almost uniformly directed the satisfaction of the rent previously received out of the fund, and the accumulation of the income arising from it, over and above the amount of the rent, until the expiration of the lease.

But in an early case of this kind, the Vice-Chancellor, who was asked to order the payment of the dividends of a fund paid in for certain glebe land, which was in lease at a very low rent, desired the matter to be taken before the Court above, and the Lord Chancellor made an order for investment and accumulation, with liberty to apply, observing that he could not give any advantage to the present incumbent at the expense of his successors, and that he thought the petitioner would do well to apply to the Ecclesiastical Commissioners, who might procure an act for permission to devote the fund to the benefit of the living : (*Ex parte Rector of Lambeth*, 4 R. C. 231.)

Usual order. Episcopal lease.

An order was made for payment out of the dividends of an annual sum equal to the rent of leaseholds, of which the reversion was in the Archbishop of Canterbury, the remainder of the income to be

accumulate until the expiration of the lease, with liberty to apply for 8 & 9 VICT. c. 18. the accumulations at that time: (*Ex parte Archbishop of Canterbury*, 23 L. T. 219.)

Similar orders were made in *Ex parte Dean and Chapter of Gloucester*, 19 L. J. (Ch.) 400, and in *Ex parte Dean and Chapter of Christchurch*, 23 L. J. (Ch.) 149, where the Vice-Chancellor observed that the case of a dean and chapter should be treated in the same way as that of a bishop.

Where the lessee is separately treated with on an agreement to pay the rent as if his interest had not been taken, the order upon the petition of the lessor will be for accumulation until the expiration of the term: (*Ex parte Dean of Battel*, 21 L. T. 55.)

In *Ex parte Dean and Chapter of Gloucester*, (19 L. J. (Ch.) 400.) cited above, the lessee had been separately dealt with, and the order directed that, if necessary, provision should be made for payment to the dean and chapter of the rent reserved, and that the remainder of the dividends should be accumulated.

Upon the petition of a lessee for apportionment between him and his lessors (a dean and chapter) of the price paid in for the land taken, a question arose as to whether the case fell within this section, or section 69, and Sir J. L. Knight Bruce, V.-C., refused to make any order, but afterwards, by consent, an order was taken to invest the money, the dividends to be paid to the lessee for the residue of his term, he to pay the rent reserved by the lease in the meantime: (*Ex parte Ward*, 2 De G. & Sm. 4; 5 R. C. 398.)

Where part of certain episcopal lands on lease for lives and years was taken by a railway company, there being a custom to renew at certain periods, the bishop was held not to be entitled to any part of the *corpus* of the sum paid in until the leases became renewable, when he might apply for a sum equal to the deficiency in the fine occasioned by the diminution in the quantity of land by part of it being so taken: (*Ex parte Bishop of Winchester*, 10 Ha. 137; see minute of order, p. 140.)

And the precentor of St. Paul's having received the dividends of a sum paid in in respect of certain land in which the reversion was vested by certain acts in the Ecclesiastical Commissioners, was allowed a sum out of the *corpus* (to be ascertained in Chambers) equal to a fine which at the time of the petition he would have reserved for a renewal, had not the land been taken by a railway company: (*Ex parte Precentor of St Paul's*, 1 K. & J. 538; 24 L. J. (Ch.) 395.)

But in another case the Master of the Rolls, considering that at the time of the taking of the property, there was no intention to renew, refused to give anything out of the capital in respect of the loss of fines: (*Ex parte Dean and Chapter of Westminster*, 18 Jur. 1113; 26 Bea. 214.)

A tenant for life, however, was declared entitled to receive the fund in Court upon the dropping of the last life of a lease to which her estate was subject, the question whether the lease ought not to have been renewed being left to be pressed by those entitled in remainder: (*In re Beaufoys Estate*, 1 Sm. & Giff. 20; 16 Jur. 1084; 22 L. J. (Ch.) 430.)

A question arose in another case, whether the lessors could have more than such part of the dividends of the funds in Court as would

Lessee separately treated with.

Petition by lessee for apportionment of compensation.

Allowance out of *corpus* for loss of fines on renewal.

Other cases of loss of profit by increase in value.

- 8 & 9 VICT. c. 18. be equal to the rent reserved, evidence being put in that the land had been let for building purposes at greatly advanced rents, by procuring the surrender of leases for lives. It was held that they were entitled to the whole dividends of the fund : (*Re Dean and Chapter of Westminster*, 26 Bea. 214.)
- Where a renewal impracticable. Where a renewal has become impracticable by the refusal of the Ecclesiastical Commissioners to renew, the fund reserved for such renewal belongs to the tenant for life : (*Morres v. Hodges*, 27 Bea. 625; *Tardiff v. Robinson*, cited *Colegrave v. Manby*, 6 Mad. 82, 83, and reported 27 Bea. 629.) Consequently in *Re Money*, (2 Dr. & Sm. 94) the purchase-money for leaseholds limited to a tenant for life and a remainderman was ordered to be divided according to the number of years unexpired at the time the company took the land, giving to the representatives of the tenant for life the value of so many years as he lived, and giving the residue to those entitled to the remainder.
- Tenant for life and remaindermen. A fund was paid in for a share in a house which had been let on lease at a low rent, in consideration of £600 being spent by the tenant in improvements, to be made within twenty years ; this arrangement was held to be as much for the benefit of the tenant for life as for the remaindermen, and the whole dividends were ordered to be paid to him : (*Re Steward*, 1 Drew. 636.)
- Separate use—mode of payment out of compensation for leaseholds under settlement. Leaseholds being settled on a lady for her separate use, a proportionate part of the fund in Court was ordered to be paid to her half-yearly during the residue of the term : (*Re Long*, 1 W. R. 226.) And a tenant for life having, during her life, taken only the dividends of the sum paid in by the railway company, her representatives were held entitled out of the *corpus* to as much as would make the amount actually received by her equal to the rent which would have been due had the premises not been taken : (*Jeffreys v. Connor*, 28 Bea. 330.)
- Where dividends less than rent. In a recent case it was held that a tenant for life of leaseholds was not entitled to more than the amount of the rent derivable from them at the time when the railway company took them, notwithstanding an allegation that, if the property had been re-let, the rent would have been received : (*Re North*, 3 W. N. 148.) But where the price paid in for certain leaseholds was insufficient to produce an annual income equal to the amount of the rent reserved, the Master of the Rolls refused to give the full dividends to the tenant for life, but, as she agreed to take a somewhat smaller sum, an order was made accordingly : (*Re Birch*, 10 Jur. N. S. 673.)
- Leaseholds, under settlement for a tenant for life and a remainderman, were taken by a company, and the price was paid in. The order was that, subject to payment of costs, in each year the capital and income must be divided by the number of years which would have yet remained unexpired had the lease still existed, and the amount of the quotient would in that year be payable to the tenant for life : (*Littlewood v. Pattison*, 10 Jur. N. S. 875.)
- So where leaseholds, settled upon the petitioner, a widow, for life, for her separate use, with remainder to her children, were taken by the Board of Works, who paid £500 as the price of them, it being alleged that that sum, if invested in consols, would be less than the

rents of the house, the final order made was, that out of the fund a Government annuity of £26 (the amount of the rents) for the life of the petitioner should be purchased in her name, and that the residue of the fund be invested, and the interest accumulated during the petitioner's life, with liberty to apply on her death: (*Re Pfleger*, 3 W. N. 197; see also 3 W. N. 191.)

A Government annuity cannot under these circumstances be purchased in the name of the accountant-general: (*Ibid.*)

Leaseholds settled upon a man for life, with a gift over on his bankruptcy or alienation, and with remainder to his children, were taken by a local board of health. The Master of the Rolls directed a reference to an actuary to ascertain how much of the capital paid in ought to be paid every year to the tenant for life, and ordered the amount certified to be paid to him: (*In re Phillips' Trusts*, 3 W. N. 213.)

Where leaseholds had been devised to one for life with remainders over, and they were taken by a railway company, the copyholds ordered to be purchased with the proceeds of the leasehold property were directed to be conveyed and surrendered "to two trustees, their heirs and assigns, upon trust for the petitioner J. W. during her life, subject to such terms and conditions as by the will of W. Coyte, the testator, are expressed and declared of and concerning the leasehold houses in the said will mentioned; and from and after the decease of the said J. W. upon trust to sell the said copyhold hereditaments," the proceeds to be upon trust for those entitled in remainder under the will: (*In re Liverpool Dock Acts, Ex parte Coyte*, 1 Sim. N. S. 202, 204.)

A yearly tenant to whom notice to quit had been given had not surrendered possession, notwithstanding the expiration of the notice, at the time when the premises were taken by a railway company. The Vice-Chancellor allowed him his costs, compensation for removal and for fixtures. This decision was overruled by the Lord Chancellor, with costs against the tenant: (*Ex parte Nadin*, 17 L. J. (Ch.) 421.)

A person entitled to an annuity charged upon leaseholds which had been taken under the London Bridge Terminus Act, 1847, was not allowed to receive the annuity out of the dividends of the sum paid in, but out of the corpus: (*Ex parte Wilkinson*, 3 De G. & Sm. 633.)

LXXV. Upon deposit in the bank in manner hereinbefore provided of the purchase-money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special act or any act incorporated therewith, the owner of such lands, including in such term all parties by this act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to

a 8 & 9 VICT. c. 18

Overholding
tenant from year
to year.

Annuities how
dealt with.

Upon deposit
being made the
owners of lands
to convey, or in
default the lands
to vest in the
promoters of the
undertaking
upon a deed poll
being executed
(a).

§ 49 VICT. c. 18. their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase-money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

Vesting of lands. (a) It was held, on a question of rating, that no conveyance was necessary to vest the lands in the company: (*Bruce v. Willis*, 11 A. & E. 463; 2 R. C. 7;) but that to vest lands in the company otherwise than by actual conveyance, there must be payment for lands contracted for in writing, or the price adjusted by the commissioners in writing, or the value found by the jury in writing; and that proof of payment of purchase-money to the owner for lands, without proof of such contract in writing, is not sufficient evidence of title: (*Earl of Harborough v. Shardlow*, 7 M. & W. 87; 2 R. C. 253.) These cases, however, were decided on the Canal Acts.

Specific performance. It has been determined that a company may seek the specific performance of a contract made between them and the landowner, where the price has been fixed, and conveyance of the land has been refused, and are not bound to proceed, under such circumstances, under their compulsory powers, the old jurisdiction not being taken away by a new remedy being given: (*Regent's Canal Co. v. Ware*, 23 Bea. 575; 26 L. J. (Ch.) 566; 5 W. R. 617; see also *Adams v.*

Deposit of Purchase-money on Refusal to Convey, &c. 227

London and Blackwall Railway Co., 2 M.N. & G. 131 ; 6 R. C. 271 ; 8 & 9 VICT. c. 18. 19 L. J. (Ch.) 557.)

But if the company can be taken as having abandoned their agreement, as where a contract has been entered into before the passing of their act, and instead of proceeding to enforce it they have exercised their compulsory powers by serving notice to treat, specific performance will not be enforced : (*Bedford and Cambridge Railway Co. v. Stanley*, 2 J. & H. 746 ; 9 Jur. N. S. 152 ; 32 L. J. (Ch.) 60 ; 7 L. T. N. S. 477.)

If, in consequence of the landowner's refusing to give up possession, the property diminish in value, the company are entitled to compensation : (*Regent's Canal Co. v. Ware*, 23 Bea. 575 ; 5 W. R. 617 ; 26 L. J. (Ch.) 566.)

It is also observed in this case that, according to the decision in *Sherwin v. Shakespear*, 5 De G. M. & G. 517 ; 17 Bea. 267, the owner, under these circumstances, is to account as a trustee, and not as a mortgagee in possession.

It seems that a court of equity will not determine which of the several modes of assessment of value mentioned is to be pursued : (*Mason v. Stokes Bay Railway and Harbour Co.*, 32 L. J. (Ch.) 110 ; *Adams v. London and Blackwall Railway Co.*, 2 M.N. & G. 131 ; 6 R. C. 271 ; 19 L. J. (Ch.) 557.)

LXXVI. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase-money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase-money or compensation payable in respect of such lands, or any interest therein, in the bank, in the name and with the privity of the accountant-general of the Court of Chancery in *England* or the Court of Exchequer in *Ireland*, to be placed, except in the cases herein otherwise provided for, to his account there to the credit of the parties interested in such lands, (describing them, so far as the promoters of the undertaking can do), subject to the control and disposition of the said Court.

(a) Where, in pursuance of a clause similar to the present, a company, without calling on the landowner to produce his title, paid

Abandonment of agreement.

Damage by landowner refusing to give up possession.

Mode of assessment not determined by Court of Chancery.

Where parties refuse to convey, or do not show title, or cannot be found, the purchase-money to be deposited (a).

Omission to call for production of title.

§ 9 VICT. C. 18. the amount of compensation into the bank, and took possession of the land, it was held that the company were not authorised to take that step; that in order to avail themselves of the provision of the act, they should have previously applied to the owner of the lands to furnish them with an abstract of his title: (*Doe d. Hutchinson v. Manchester, &c., Railway Co.*, 14 M. & W. 687; 15 J. L. (Ex.) 208; 3 R. C. 748.)

Construction of s. 76. The sound construction of this section seems to be, "that, where a party in possession has shown a bad title, and the true owner cannot be found, the Legislature intended the promoters of the undertaking to have recourse to the jury clauses of the act; they are to have an inquiry before a jury, and the true owner having been summoned, and failing to appear on such inquiry, the 76th section provides" for the deposit of the price, and the 77th for the vesting of the land. (*Per* Sir W. P. Wood, V.-C., in *Douglass v. London and North-Western Railway Co.*, 3 K. & J. 173; 3 Jur. N. S. 181.)

Where a good title has been agreed to be made, but cannot.

A proper case, then, under this section was one in which a person, although unable to deduce a good title, the property having been purchased by him with partnership money, and held as partnership assets, nevertheless contracted for the sale of it. The defect would have been cured by payment in under this section, which, however, the Court could not order, together with specific performance of the contract, since the plaintiff had agreed to give a sixty years' title, and had shown only a possessory title for thirty-six years: (*Douglass v. London and North-Western Railway Co.*, *ubi supra*.)

If title found bad after value assessed by jury.

So, the function of the jury being merely to ascertain the value of, and not to try the right to, the property, the price awarded will be properly paid in under s. 76, where leaseholds, the subject of compensation, are discovered to be held upon invalid leases: (*Ex parte Cooper*, 2 Dr. & Sm. 312; 11 Jur. N. S. 103; 11 L. T. N. S. 661; 13 W. R. 364.) See *Brandon v. Brandon*, 2 Dr. & Sm. 305; 13 W. R. 251; 11 Jur. N. S. 30, where it was said that, where money is paid in under this section, the Court is bound to determine the question of title.

Except where whole of vendor's title would be invalidated by so doing.

There are, however, certain cases coming within the provisions of s. 79 in which, although the Court has held it to be the duty of the company to submit the point of title to the Court, still it has not been thought fit to express any opinion upon it: (*Re Sterry*, 3 W. R. 561; *Re Perry*, 1 Jur. N. S. 917.) The reason for this was that it was considered that it was not intended that the possessor's title to his whole property should be hazarded by the taking of a small part of it by a railway company. (See p. 231, *infra*.)

[But see as to practice under old Railway Acts, *Ex parte Ismauchand*, 3 Y. & C. 721.]

Secus, if litigation must clearly ensue, to settle the questions on the whole title.

It was recently observed by V.-C. Wood, that "the Legislature has anxiously provided that the Court shall not upon these occasions of applications for payment of purchase-money, deal with the property in any way whatever which can affect the title, unless it be shown so clearly as to be beyond question that there must be litigation upon the question of title:" (*Re St Pancras Burial Ground*, L. R. 3 Eq. 173, 183; 36 L. J. (Ch.) 52; 15 W. R. 150.)

The Court has no jurisdiction to order payment of interest on money paid in under this section: (*In re Divers*, 1 Jur. N. S. 995.)

Upon the question as to whether money deposited under this section is to be considered as invested with the legal qualities of money, or with those attaching to the land it represents, it will be sufficient to refer to the remarks of Vice-Chancellor Kindersley, (quoted above, p. 159,) who held that such deposits are to be treated as money: *Re Harrop's Estate*, 3 Drew. 726; 3 Jur. N. S. 380; 26 L. J. (Ch.) 516; *Re East Lincolnshire Railway Act*, *ex parte Flamank*, 1 Sim. N. S. 260, where, after notice to treat had been served, the landowner having become lunatic and died, it was held that the money had been paid in under s. 76, and consequently was to be treated as personalty.

Interest on money paid in under s. 76.
Conversion: effected by payment in under this section.

Where after the finding by arbitration of the amount of purchase-money to be paid, the purchaser is let into possession upon an agreement for payment of the purchase-money, with interest until completion, and a proviso that the vendor should execute certain works, the Court will order the money to be paid in upon the refusal of the purchaser to complete, the title having been approved and the conveyance settled, although the vendor may not have complied with all the terms of the agreement: (*South-Eastern Railway Co. v. London, Brighton, and South Coast Railway Co.*, 1 W. N. 130; 14 W. R. 666.)

Conditional agreement: payment in, notwithstanding vendor's non-compliance with contract.

LXXVII. Upon any such deposit of money as last aforesaid being made the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase-money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

Upon deposit being made, a receipt to be given, and the lands to vest upon a deed poll being executed.

8 & 9 VICT. c. 18.

Application of
moneys so de-
posited.

LXXVIII. Upon the application by petition of any party making claim (a) to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery in *England* or the Court of Exchequer in *Ireland* may, in a summary way, as to such Court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such Court shall seem fit.

Right of incum-
brancer to apply
under this
section.

(a) It seems that an incumbrancer would be entitled to apply under this section for money paid in under s. 76; though in apparently the only instance of such an application, in the absence of authority on the subject, an order was refused: (*Re Marriage*, 9 W. R. 777.)

Affidavit that
petitioner is un-
aware of claims.

An affidavit by the petitioner, stating that he knows of no other title or claim, will be necessary before money can be paid out under this section: (*Re Hollick*, 16 L. J. (Ch.) 71; *Ex parte Grainge*, 3 Y. & C. 62. But see *Re Baroness Brayne*, 9 Hare, App. vii.; 22 L. J. (Ch.) 285; and *supra*, p. 218. See Consolidated Order, 34, r. 3; Seton on Decrees, 3d ed. 1077.)

To be made by
petitioner
himself.

The affidavit must be made by the petitioner himself, not by his solicitor: (*Re London and North-Western Railway Co.*, 1 W. R. 60.)

Appointment of
purchase-money
where part of
title bad.

Where title can be shown as to part only of the interest acquired by the company, the Court will, in some cases, apportion the purchase-money, and order repayment to the company of that part which had been paid for the property, to which a bad title has been deduced.

Inquiry directed.

Thus, where money had been paid in under s. 76, for the purchase of certain leaseholds, and as compensation for loss of trade, and for outlays upon the property made by the lessee, upon the faith of the leases, the leases being ascertained to have been granted by mistake, an inquiry in Chambers was directed as to what part of the sum had been paid in for such compensation, and an order made for the residue to be repaid to the company: (*Ex parte Cooper*, 2 Dr. & Sm. 312; 11 L. T. N. S. 661; 11 Jur. N. S. 103; 13 W. R. 364; followed in *Re Hayne*, 13 W. R. 492.)

It became unnecessary to make a decree of this nature in another case, where the company were held to have paid in the money, under the circumstances, as the agreed amount of compensation payable for the interest, whatever it might be, of trustees, who claimed a right of perpetual renewal, which was disputed by the company: (*Brandon v. Brandon*, 2 Dr. & Sm. 305; 11 Jur. N. S. 30; 13 W. R. 251; 11 L. T. N. S. 658.)

Right of trustees
under this
section.

An appointment was ordered in a case in which title could not be shown to part of the land taken in: (*Re Alston*, 28 L. T. 337; 5 W. R. 189. See also *Re Perks*, 1 Sm. & Giff. 545.)

A Court of Equity has no jurisdiction under this section to order

Investment of Money Deposited—Questions of Title. 231

payment of the principal sum in Court, or any part of it, to the trustees of the property, but will direct the investment of it, and payment of the dividends to them : (*Ex parte Harwood*, 3 Giff. 218.)

LXXIX. If any question arise respecting the title to the lands in respect whereof such moneys shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the Court ; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

Party in possession to be deemed the owner.

Where the petitioner stated that he took possession of the property in 1837, and that it had been vacant for ten years previously, he was held entitled to the fund paid in : (*Ex parte Webster*, 1 W. N. 246.)

What title sufficient.

The intention of this section has been held to be to direct the Court of Chancery how it should act in any case in which, upon an application for the money paid in, or deposited by the railway company, it should be unable to arrive at a satisfactory conclusion upon the question of title. (*Per Kindersley*, V.-C., *Ex parte The Freeman and Stallings of Sunderland*, 1 Drew. 184.)

Intention of this section.

It is consequently no misdirection on the part of a judge if, upon the trial of an issue, sent by the Court of Chancery, for the purpose of deciding the right to the land, he do not call the attention of the jury to the provisions of this section : (*Ibid.*)

Where the owner of a large part of the foreshore sold a small piece to a railway company, and the Crown had also put in a claim for compensation, which was paid, and the company desired to deprive the owner under their title so derived from the Crown, it was held that it was a case under this section, and not one to be tried under the jurisdiction given to the Court of Chancery in these cases : (*Re Alston*, 28 L. T. 337 ; 5 W. R. 189 ; *Re St Pancras Burial Ground*, L. R. 3 Eq. 173.)

It is, however, the duty of the company to submit such doubts as may arise on the title to the Court : (*Re Sterry*, 3 W. R. 561 ; *Re Perry*, 1 Jur. N. S. 917.)

Doubts to be submitted to the Court by the company.

Where the constitution of a will appears to be very doubtful, four eminent conveyancers having given different opinions upon it, still the Court would not entertain an objection on the part of the company to pay out the dividends, nor decide upon the question submitted : (*Re Perry*, 1 Jur. N. S. 917.)

LXXX. In all cases of moneys deposited in the bank

Costs in cases of money deposited.

2 & 3 Vict. c. 18

under the provisions of this or the special act, or an act incorporated therewith (a), except where such moneys shall have been so deposited by reason of the wilful refusal (b) of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery in *England* or the Court of Exchequer in *Ireland* to order (c) the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters (d) of the undertaking; (that is to say,) the costs of the purchase (e) or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such moneys in Government or real securities, and of the reinvestment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys shall be invested, and for the payment out of Court of the principal of such moneys, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: Provided always, that the costs of one application only for reinvestment in land shall be allowed, unless it shall appear to the Court of Chancery in *England* or the Court of Exchequer in *Ireland* that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the Court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

Incorporation of
s. 80 in Extension
Acts.

(a) The law with regard to the question of the applicability of this section in cases where the act, under which the money has been paid in, was passed before the Lands Clauses Act, but has been subsequently repealed, or simply extended by a further act, passed after the Lands Clauses Act, is set out in the notes to s. 5, (*ante*, p. 145.)

Reasonable
doubts will justify
refusal.

(b) Refusal to accept the price offered, or to convey, would not, if founded upon a reasonable doubt in the vendor's mind, disentitle him to costs under this section; in order to this, he must have

refused capriciously and wilfully: *Ex parte Bradshaw*, 16 Sim. 8 & 9 Vic. c. 18. 174; 12 Jur. 888; *Re Windsor, Staines, &c., Railway Act*, 12 Bea. 522, where it was said, that "where there is a fair objection, the party is not to be treated as having wilfully refused, because his reason afterwards turns out to be untenable." The fact that a Court of law, to which the vendor's objection was submitted, reversed judgment upon the case, would be sufficient to show that the objection was a reasonable one, (*Ex parte Bradshaw*, 16 Sim. 174; 12 Jur. 888;) or that there was a difference of opinion amongst the Judges in the Court of law: (*Ex parte Railston*, 15 Jur. 1028.)

So also where a landowner, acting *bonâ fide* upon the opinion of counsel, to the effect that certain commissioners had no right to take his land, refused to accept a sum tendered for it, which sum was then paid into Court, there was held to be no "wilful refusal," although a conveyance was subsequently made: (*Ex parte Dashwood*, 3 Jur. N. S. 103.)

But where a vendor insisted upon receiving his costs before giving possession, and the price was consequently paid into Court under s. 76, he was ordered to pay the costs of calling in the sheriff to give possession to the company, because there is nothing in the act which provides for such previous payment of costs: (*Re Turner*, 5 L. T. N. S. 524; 10 W. R. 128.)

Where the title of the vendor is questioned by the company, but there is no refusal or default on the part of the landowner, the company will have to pay the costs of submitting the question to the Court: (*Re Woodburn*, 13 L. T. N. S. 237.)

The mere inability of a landowner to clear off incumbrances exceeding the value of the land, is not to be taken as a "wilful refusal": (*Re Divers*, 1 Jur. N. S. 995.)

(c) Sir J. Stuart, V.-C., refused to allow the insertion in the order for costs of the words, "upon the approval and execution of the conveyance," (*Re Woolley*, 17 Jur. 850,) but this will now be allowed upon the authority of the case, *Ex parte Copley*, 4 Jur. N. S. 297, and *Ex parte Eton College*, 7 W. R. 710.

The order for costs should follow the words of the 80th section: (*Re Edmunds*, 14 W. R. 507; 35 L. J. (Ch.) 588; 14 L. T. N. S. 243.)

The Court's ordinary discretion as to costs is not taken away because they are provided for in some way by a special act: (*Re Allen*, 2 W. N. 11.)

The words "usual costs" will include any costs not payable by the company, and these will have to come out of the fund: (*Re Bearfof's Estate*, 1 Sm. & Giff. 20; 16 Jur. 1084; 22 L. J. (Ch.) 430.)

Where an order has been made by the Court below directing costs to be paid by a corporation acting under the Lands Clauses Act, if they do not join in the appeal upon the question of title, they cannot ask for an alteration of the order as to costs: (*Re Gregson*, 34 L. J. (Ch.) 41; 10 Jur. N. S. 1138; 13 W. R. 193; 11 L. T. N. S. 460.)

[d] It sometimes happens that, when several companies have taken various parts of the same person's land, and paid in the respective values for the same, it is desired to reinvest in a single purchase the aggregate sums in Court. In such cases the rule,

Opinion of
counsel.

Refusal to convey
until costs paid.

Questions raised
by company.

Form of order for
costs.

Should follow
words of s. 80.

Discretion of
Court as to costs.

"Usual costs."

Appeal for costs.

Costs of invest-
ment of sums
paid in by several
companies.

8 & 9 Vict. c. 18. though not at first settled, (*In Re Manchester, Sheffield, &c., Railway Co.*, 21 Bea. 162; 2 Jur. N. S. 31; *Ex parte St Thomas's Hospital*, 7 W. R. 425; *Ex parte Christchurch*, 9 W. R. 474,) is, that the costs of reinvestment shall be borne equally by the several companies, and not rateably; but that the cost of the *ad valorem* stamp upon the conveyance or assignment shall be borne rateably, according to the amount of the purchase-money paid in by each company: (*Ex parte Bishop of London*, 2 De G. F. & J. 14; 6 Jur. N. S. 640; see Order, p. 18; *Re Maryport Railway Act, Ex parte Earl of Lonsdale*, 32 Bea. 397; *Re Carlisle and Silloth Railway Co.*, 33 Bea. 253; *Re London and Brighton Railway Co. v. Shropshire Union Railway Co.*, 23 Bea. 605; *Re Merton College*, 33 Bea. 257; *Re Byron*, 1 De G. J. & Sm. 358; 9 Jur. N. S. 838; *Ex parte Governors of Christ's Hospital*, 2 H. & M. 166. See Seton On Decrees, (3d edit.) 1073.)

Surveyor's fee. And where the fund has been paid in by several companies, the surveyor's fee will be apportioned in the same way as the *ad valorem* stamp: (*Ex parte Corporation of London*, L. R. 5 Eq. 418.)

Cases of hardship. In cases of great hardship or oppression, by which is meant, not so much a great discrepancy in the several sums paid in, but an increase of costs occasioned by numerous and harassing petitions against the companies, (*Re Byron*, 1 De G. J. & Sm. 358; 9 Jur. N. S. 838,) this rule might be departed from: (*Ex parte Christ's Hospital*, 2 H. & M. 166.)

As to how these costs would be provided for in cases where some of the companies are not by their special acts (passed before or not incorporating the Lands Clauses Act) made liable to bear them, see *Ex parte The Ecclesiastical Commissioners*, 11 Jur. N. S. 461; 13 W. R. 575; 12 L. T. N. S. 294.

Land "to be settled upon the like uses." (e) The costs of a purchase of land "to be settled upon the like uses," were refused where the purchase had been made before reference to the Master: (*Ex parte Bouverie*, 5 R. C. 431.)

The costs of reinvestment of money paid in for episcopal lands in the purchase of a leasehold interest of which the bishop was entitled to the reversion, were ordered to be paid by the company as if the case had been a purchase of freeholds under the Episcopal and Capital Estates Acts: (*Ex parte Bishop of London*, 2 De G. F. & J. 14; 6 Jur. N. S. 640.)

Redemption of land-tax. The company will be ordered to pay the costs of reinvestment in the redemption of land tax: (*Ex parte Beddoes*, 2 Sm. & G. 466; *In re London, Brighton, and South Coast Railway Co.*, 18 Bea. 608.)

Enfranchisement. The costs of laying out the fund in Court in the enfranchisement of other lands belonging to the same landowner are payable by the company: (*Re Cheshunt College*, 1 Jur. N. S. 995; 3 W. R. 638; *Dixon v. Jackson*, 25 L. J. (Ch.) 588.)

Fees and fine on admission to copyholds. Where an order for reinvestment in copyholds has been obtained, the costs payable by the company include the fees, but not the fine, upon admission: (*Ex parte Sarcaston*, 4 Jur. N. S. 473; 6 W. R. 492.)

Rebuilding almshouses. The costs of an application for rebuilding almshouses, which had been interfered with in consequence of a tunnel having passed

* 14 & 15 Vict. c. 104, amended by 17 & 18 Vict. c. 116.

beneath them, were held to be payable by the company: (*Ex parte* 8 & 9 Vict. c. 18. *Thorner's Charity*, 12 L. T. 266.)

So also, the costs of alterations in school buildings, which had been injured by the proximity of the works: (*Re Chelsea Water-Works Co.*, 28 L. T. 173.)

Under the words "purposes aforesaid" in this section, it was held that the costs of an application for investment in the improvement of almshouses, (*Re Buckinghamshire Railway Co.*, 14 Jur. 1065,) or in the erection of new farm buildings to replace former severed buildings, (*Ex parte Melward*, 27 Bea. 571; 6 Jur. N. S. 478; 29 L. J. (Ch.) 245,) could not be allowed, as those words must be confined to the purposes mentioned in the former part of the act, viz., the 69th section.

But the costs of a petition for reinvestment in the rebuilding of farm houses, (*Ex parte Dean and Chapter of Canterbury*, 10 W. R. 595,) and of a vicarage house, (*Ex parte Rector of Welbourn*, 3 W. N. 104; *Re Incumbent of Whitfield*, 1 J. & H. 610; 30 L. J. (Ch.) 816; 7 Jur. N. S. 909; 9 W. R. 764; but see *Ex parte Madon*,) and in the improvement of the water supply of the town in which the charity was situate, (*Re Lathropp's Charity*, 1 L. R. (Eq.) 467; 14 W. R. 326; 13 L. T. N. S. 784,) were allowed.

So, also, were the costs of a petition for investment in procuring and fitting up houses for the temporary accommodation of the patients of a hospital, whose site had been taken: (*Re St Thomas's Hospital*, 11 W. R. 1018.)

The Court refused to allow the costs of a second petition asking that a further sum might be paid out for the purpose of completing some buildings on a farm previously purchased out of the fund in Court: (*Re Rudyard*, 2 Giff. 394; 6 Jur. N. S. 816; 3 L. T. N. S. 232.)

As to the propriety of other investments of the nature of those just mentioned, see *ante*, notes to s. 69.

As to the costs in cases in which the price for the proposed reinvestment exceeds the amount paid for the land taken. In an early case where a contract was entered into for the purchase of land of a higher price than the sum paid in, and for securing the excess of costs so incurred by a rent-charge upon the purchased property, the costs occasioned by the peculiarity of the contract were ordered to come out of the fund: (*Ex parte Newton*, 4 Y. & C. (Ex.) 518.)

And where a railway act, passed before the Lands Clauses Act, provided for the costs, charges, and expenses attending purchases, the costs, charges, and expenses occasioned by a reinvestment upon property of greater value were ordered against the petitioner, as also the company's costs upon the application: (*Ex parte Tetley*, 4 R. C. 55.)

But in a similar case cited, in a note appended to this case, it appears that the costs, charges, and expenses were allowed: (*Ex parte Palmerston*, 4 R. C. 57, n.)

It was held that where the petition prayed the taxation of costs, charges, and expenses of reinvesting the fund in Court in land, and of the inquiry before the master, and of the petition, and all proceedings relative thereto, the objection applicable to such a case as *Ex parte Tetley* (*ubi supra*) failed, and only that which is in strict

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8 & 9 VICT. C. 18. accordance with the words of s. 80 of the Lands Clauses Act is asked: (*Ex parte Hodge*, 16 Sim. 159.)

Proper form of order.

The proper order, however, seems to be that the company shall pay all the costs according to the act, but that the petitioner shall pay all such extra costs as may be incurred in consequence of the price exceeding the sum paid in: (*Ex parte King's College, Cambridge*, 5 De G. & Sm. 621.)

And in another case, the Court directed that the costs to be paid by the company should not be increased by reason of the price paid for the land being more than that paid in: (*Re Branmer*, 14 Jur. 236.) And the same order was made in *Re Loveband*, 30 L. J. (Ch.) 94; 9 W. R. 12; and *Attorney-General v. Mayor, &c., of Rochester*, 2 W. N. 142.

Thus where it was proposed to add a sum from the trust estate, in order to make up the price required for the intended reinvestment, the costs of the reinvestment of the fund in Court only were allowed, since the amount of the stamp duty would be considerably increased by the course taken: (*Re Elliott*, 17 L. T. 241; *Ex parte Corporation of Carlisle*, 20 L. T. 166; 1 W. R. 103.)

Payment to successive incumbents.

The company will pay the costs of successive incumbents applying in Chambers for payment to them of dividends: (*Ex parte Incumbent of Guilden Sutton*, 8 De G. M. & G. 380; 2 Jur. N. S. 793.)

Brokerage.

The words "costs of investment of the purchase-money," in a special act include the broker's commission upon purchases of public securities: (*Ex parte Corporation of Trinity House*, 3 Harv. 95.)

Form of order.

The proper form of the order is that the whole sum be laid out in bank annuities, (without deducting the brokerage, the petitioner undertaking to pay the same,) and then, that the company pay to the petitioner the amount of such brokerage: (*Re Braithwaite*, 1 Sm. & Giff. xv.; 17 Jur. 753; *Re Buckinghamshire Railway Co.*, 47 Legal Observer, 34.)

In another case, however, the usual form was departed from, and the order went for the investment of the money after deducting the brokerage, which was directed to be paid, together with his other costs, to the tenant for life: (*Ex parte Harborough*, 17 Jur. 1045.)

Power of attorney.

The costs of a power of attorney to enable the bankers in London to receive dividends are payable by the company: (*Ex parte Incumbent of Guilden Sutton*, 8 De G. M. & G. 380; 2 Jur. N. S. 793.)

Cost of disentailing deed.

The latest cases show that the Court does not require a disentailing deed of money paid in for estates tail to be executed before payment out: (See *ante*, p. 216.) But where such a deed has been executed, it seems that the costs of it will be ordered to be paid by the company: (*Re Brooking*, 2 Giff. 31; 6 Jur. N. S. 441; *Ex parte Vaudrey*, 3 Giff. 224; 7 Jur. N. S. 753; and see *Ex parte Thoroton*, 17 L. J. (Ch.) 167; 12 Jur. 130.)

S. 80 applies to money paid in under s. 85.

Section 80 applies equally, whether the money has been paid in under the previous or the subsequent sections; and consequently where a company had entered into possession under s. 85, the landowner was held entitled to his costs, incurred in the appropriation of certain ground rents, such costs being properly costs

"incurred in consequence" of the purchase by the company: (*Ex parte Flower*, L. R. 1 Ch. 599. See *Ex parte Buck*, 1 H. & M. 519.)

Where a leasehold has been taken, and a decree made for half-yearly sales of stock and payment of the proceeds to the person entitled, the company must pay the expenses of such half-yearly sales: (*Re Long*, 1 W. R. 226; 20 L. T. 305; *Littlewood v. Pattison*, 10 Jur. N. S. 875; *Re Edmunds*, 14 W. R. 507; 14 L. T. N. S. 243; 35 L. J. (Ch.) 538.)

The order for costs in these cases should follow the terms of the 80th section of the Lands Clauses Act, not for payment "from time to time" of such costs, with a direction for taxation: (*Re Edmunds*, *ubi supra*.) Nor is it necessary to obtain a fresh order for costs on each successive sale: (*Ibid.*)

There has been some doubt upon the cases upon the question whether the railway company ought to bear the costs of unsuccessful and abortive attempts at reinvestment of money in Court; but it will be found that the weight of authority is in favour of throwing these costs upon the company, for the reasons given in the cases cited below.

Where the Master refused to certify that a good title had been shown of land chosen as a reinvestment, the costs were ordered out of the fund: (*Ex parte Stevens*, 15 Jur. 243; see *Re Hungerford*, 1 K. & J. 413, 416; 1 Jur. N. S. 845.)

But it being found that a proposed purchase was not worth the money to be paid for it, the abandonment of the purchase was held to be *bonâ fide*, and the company had to pay the costs of the proceedings, as far as they had gone: (*Re Woolley*, 17 Jur. 550.)

It seems settled, however, that when a proposed purchase has not received the sanction of the Court, and fails, the costs occasioned by the attempt will come out of the fund: (*Re Hardy*, 18 Jur. 370.) See the rule as stated by Vice-Chancellor Kindersley, who observed in a case where the Court had sanctioned a reinvestment, but title could not be made, that the cost of these unsuccessful attempts are payable by the company, as "reasonable charges and expenses" incident to the reinvestment of the money in land: (*Ex parte Rector of Holywell*, 2 Dr. & Sm. 463; 11 Jur. N. S. 579.)

The Master of the Rolls refused to make the company pay the costs, where inquiries had been directed, and the proposed purchase subsequently abandoned, another mode of reinvestment being resorted to: (*Ex parte Copley*, 4 Jur. N. S. 297.)

It has, however, since been held by Sir J. Stuart, V.-C., that even after the approval of a proposed purchase, if it be abandoned *bonâ fide*, on the ground that considerable expense would be incurred in perfecting the title, the costs so occasioned are reasonable charges and expenses, and must be borne by the company: (*Ex parte Foadrey*, 3 Griff. 224; 7 Jur. N. S. 753; but see *Re Macdonald*, 4 Jur. N. S. 865.)

The company were ordered to pay the costs of proceedings for obtaining the sanction of the Master and the Court to an interim investment on mortgage of real estate, although such sanction was refused: (*Ex parte Franklyn*, 1 De G. & Sm. 528.)

§ 9 Vict. c. 18.

Remission of re-investment by act of Parliament.

A reinvestment having been made by a burial board of part of the money paid in, an act of Parliament was afterwards passed setting aside such reinvestment. It was held that the dean and canons and churchwardens were properly served, and that the petitioners (the Corporation of Manchester) should have their costs, and the dean, canons, and churchwardens one set of costs, against the company: (*Ex parte Manchester Burial Board*, 1 W. N. 117.)

Upon the refusal of the Court to sanction an apportionment of the corpus of the fund in Court amongst certain chapels of ease, under 1 & 2 Vict. c. 106, upon the petition of the vicar, the company were allowed their costs, because this was a mere arrangement, and not like the case of a tenant for life and his incumbrances: (*Ex parte Vicar of Kidderminster*, 7 W. R. 482.)

Costs where there is a suit pending with respect to the land taken.

It being a guiding principle of the Court of Chancery that the landowner shall not be put to expense in consequence of the involuntary alienation of his land, it has been almost uniformly held that where a suit with regard to that land is pending at the time of the taking of it by a public company, or is instituted before the purchase-money has been paid over to the parties entitled to receive it, all the costs and charges occasioned by such taking are to be paid by the company. The solitary exception to this rule is the case of costs occasioned by "adverse litigation:" (See *per Kindersley, V.-C.*, in *Haynes v. Barton*, 1 Dr. & Sm. 483; 30 L. J. (Ch.) 804; 7 Jur. N. S. 699.)

Adverse litigation.

Applications for transfer to the credit of the cause.

It is necessary to have the sanction of the Court to dealings with funds standing to the credit of a cause: (*Davis v. Combermere*, 3 R. C. 506.) Thus all the costs of the petitioner under such circumstances, and also of all other parties of and incident and consequent on an application for transfer of purchase-money to the credit of a cause, must be paid by the company: (*Dinning v. Henderson*, 2 De G. & Sm. 485; *Patten v. Gatty*, 1 W. R. 219 n.; *Haynes v. Barton, ubi supra*; but see *Prescott v. Wood*, 3 W. N. 123.)

Several petitioners.

So also where there were two petitions presented by one person, one being in the matter of the act and a cause, and the other in the matter of the act alone: (*Carpmael v. Proffitt*, 23 L. J. (Ch.) 365.) And in a late case where seven separate petitions were presented by seven several persons having derivative interests, all of whom, except two, appeared by different solicitors, Vice-Chancellor Wood allowed the costs of all parties, but gave only one set of costs to the parties who appeared by the same solicitor: (*Re Nicholas*, 1 W. N. 93.)

Separate account, Mortgagees served.

The costs of trustees who represented persons interested in property standing to a separate account were allowed: (*Bradshaw v. Fane*, 9 Jur. N. S. 166;) and in *Eden v. Thompson*, (2 H. & M. 6.) the petition being served upon mortgagees, defendants in the cause, in ordering the company to pay the costs of these persons, Wood, V.-C., remarked that it was right to serve mortgagees so long as there was no suit to set aside the mortgage.

Service by trustees on cestuique trustent.

In *Re Brandon*, 2 Dr. & Sm. 162, (S. C. 9 Jur. N. S. 11, nom. *Brandon v. Brandon*.) the trustees had served the parties, and the costs occasioned thereby were allowed, on the ground that no authority had been given in the suit to the trustees to deal with the property. But Knight Bruce, V.-C., refused to give the costs of any

one but the petitioner, whose annuity had been decreed to be 8 & 9 Vict. c. 18. chargeable upon the real and personal estate of the testator in the cause: (*Re Hore*, 5 R. C. 592. And this case was followed in principle in *Wilson v. Foster*, 5 Jur. N. S. 113.)

Exceptions to the rule.

In *Paterson v. Paterson*, (10 L. T. N. S. 183,) the costs of a remainderman who had been served and had obtained leave to attend the proceedings, but not of other parties to the suit, were ordered to be paid by the railway company. But *Ex parte Staples* (1 De G. M. & G. 294; 16 Jur. 158) seems to show that unless the fund is standing in the matter of the act only, and not in the matter of a cause, the remaindermen should be served. On the other hand, where the petition was entitled in the matter of a cause, but not in the matter of the act, it was held that the Court has no jurisdiction to decree costs against the company: (*Brown v. Fenwick*, 35 L. J. (Ch.) 241; 13 L. T. N. S. 787; 14 W. R. 257.)

In several cases the costs of service of various parties, though not those of their appearance, have been ordered to be paid by the company: (*Melling v. Bird*, 22 L. J. (Ch.) 599; 20 L. T. 303; *Sidney v. Wilmer*, 31 Bea. 338.)

The costs of obtaining orders in the suit relative to the taking of the land, and the charges and expenses incident thereto, are payable by the company, such costs not coming within the exception of costs caused by adverse litigation between the parties: (*Henniker v. Chafy*, 28 Bea. 621.) Thus the company must pay for a reference to the Master as to the propriety of the sale of the land: (*Picard v. Mitchell*, 12 Bea. 486;) also where the reference is rendered by the lunacy of the landowner, (*Re Taylor*, 1 M. & G. 210;) and of a petition to allow the parties to proceed to assess the value by arbitration or a jury: (*Haynes v. Barton*, 1 Dr. & Sm. 483; 7 Jur. N. S. 699; 30 L. J. (Ch.) 804;) but not the costs of proceedings taken by the parties in consequence of a wrongful entry into possession by the company who afterwards paid a sum into Court: (*Ibid.*)

Orders in suits obtained for effecting sale to company.

Reference to Master.

Lunatic's land. For proceeding by arbitration or jury.

Proceedings on wrongful entry.

Where a person by will has settled lands to which he is entitled, in strict settlement, if the land is taken by a railway company, the costs of investing the purchase-money in real estate, to be settled to the uses of the will, must be paid by the company: (*Re De Beauvoir*, 2 De G. F. & J. 5.)

Costs where the fund becomes subject to a re-settlement.

But where the dividends of stock representing purchase-money paid into Court, have been paid to the tenant for life, and upon her death her husband has resettled the property, the company are not liable to pay the costs of a petition presented by him for payment to him of the dividends: (*Re Pick*, 10 W. R. 365; 31 L. J. (Ch.) 495.)

In another case, however, where the purchaser of the interest of the persons entitled to a fund in Court, settled the same, the company had to pay the costs, charges, and expenses of the petitioners who claimed an apportionment, and payment to them of dividends under the settlement: (*Re Lye*, 1 W. N. 20; 13 L. T. N. S. 664.)

And where it was proposed to transfer a sum of stock standing in the name of an incumbent, to the ecclesiastical commissioners, in consideration of a grant by them of an annuity under 23 & 24 Vict. c. 59, the Court made the order prayed for, and directed the costs to be paid by the railway company according to the Lands Clauses Act: (*Ex parte Rector of Twyford*, 1 W. N. 126.)

Transfer of stock to ecclesiastical commissioners under 23 & 24 Vict. c. 59.

8 & 9 Vict. c. 18. If property settled under a private act of Parliament is taken by a railway company, and is so circumstanced that it is necessary to serve trustees and remaindermen with a petition for reinvestment, according to the terms of such act, the company will not have to pay the costs of these parties: (*Re Bowes' Estate*, 10 L. T. N. S. 598; 12 W. R. 929; 4 N. R. 315.)

Property subject to act of Parliament. But it appears that costs usually allowed under the Lands Clauses Act, such as those of interim investments, (see above, p. 217,) will be allowed where the property is subject to a private act, as the company's right to take the land depends upon their own act and the Lands Clauses Act, and not upon powers of sale or other provisions contained in the personal act: (*Re Shuttleworth*, 8 Jur. N. S. 1090.)

Interim investment in Government securities. The costs of an interim investment in Government securities will be allowed: (*In re Liverpool Railway Co.*, 17 Bea. 392; *Ex parte Eton College*, 15 Jur. 45.)

Mortgages. Or, it seems, upon mortgage of real estate: (*Ex parte Franklin*, 1 De G. & Sm. 528; but see *Re Lomas*, 34 Bea. 294.)

Interim investment by trustees. Also the costs of a petition by trustees for interim investment and payment of dividends to them: (*Re Burnell*, 10 Jur. N. S. 289; but see *Mitchell v. Newell*, 3 R. C. 515.)

By surviving trustee. And the company must pay the costs of an order for interim investment and payment of dividends to a surviving trustee, although an order to pay to the trustees or the survivor of them might have been originally obtained: (*Re Goe*, 3 W. R. 119; 24 L. T. 152.)

Where property subject to private act. And the costs of an interim investment of a fund paid in for property settled by a private act, are payable by the company as coming under the Lands Clauses Act, and not under the private act: (*Re Shuttleworth*, 8 Jur. N. S. 1090.)

Under old acts. Several cases arose in the Exchequer in Equity upon the construction of special acts not providing for these costs; and where the words were, "costs in consequence of the purchase," (*Ex parte Hirst*, 4 Y. & C. 468,) or, "costs of the purchase of other lands to be settled to the like uses," (*Ex parte Taylor*, 1 Y. & C. 229,) the costs of interim investments were disallowed. (See also *In re Gould*, 24 Bea. 442; *Re Strachan*, 9 Ha. 185; *Mitchell v. Newell*, 3 R. C. 515.) They were, however, allowed upon the construction of the words, "costs of all purchases," (*Ex parte Bishop of Durham*, 3 Y. & C. 690;) and "costs of reinvestment in land or other disposition" of the fund: (*Ex parte Onslow*, 1 Y. & C. 553.)

Absolute transfer. Practice in the Exchequer in Equity. Where the special act (passed before the Lands Clauses Act) did not provide for the costs of transfers to the persons absolutely entitled to the fund in Court, it seems that the Court of Exchequer was in the habit of allowing them; and in cases transferred from the Exchequer, under 5 Vict. c. 5, the present Master of the Rolls has in two cases followed that practice: (*Re Robertson*, 23 Bea. 433; *Re Tiverton Market Act*, 26 Bea. 240.) But Sir W. F. Wood, V.-C., did not follow these cases in *Re Mauseley*, 4 K. & J. 86 n.

"Pending" matter within 5 Vict. c. 5. *Re Metford* (8 W. R. 634) was a case in which, although transferred from the Exchequer, the application was made on the death of the tenant for life, and the matter being thus not "pending" within the words of 5 Vict. c. 5, it was subject to the jurisdiction of the Court of Chancery alone.

But where the case was not one transferred from the Exchequer, s & 9 Vict. c. 18 although the opinion was strongly expressed that the company ought to pay these costs, it was held that the Court of Chancery was not bound to follow the practice in the Exchequer, though it had no jurisdiction to order them: (*Ex parte Molyneux*, 2 Coll. 273; *Ex parte Thoroton*, 17 L. J. (Ch.) 167; *Re Bristol and Exeter Railway Co.*, *Ex parte Gore Langton*, 11 Jur. 686; *Re Metford*, 8 W. R. 634; *Re Musgrave*, 6 Jur. N. S. 797; 2 L. T. N. S. 719; *Re Land*, 4 K. & J. 81.)

Court of Chancery not bound to follow practice in Exchequer.

The authority given by the Lands Clauses Act to the tenant for life to deal with property required for the purposes of the act, renders unnecessary the concurrence of trustees or remaindermen, under ordinary circumstances; and the costs of serving them will not in general be allowed against the company: (*Ex parte Staples*, *In re Broune*, 1 De G. M. & G. 294; 16 Jur. 158; *In re Legge*, 8 W. R. 559; *Re Finch*, 1 W. N. 93; 14 L. T. N. S. 394; 14 W. R. 472.)

Service of trustees and remaindermen.

But it seems that the service and appearance of the trustee where the fund is to be paid out to the person absolutely entitled to it, is proper, and the costs are payable by the company: (*Ex parte Metropolitan Railway Co.*, 3 W. N. 204; 16 W. R. 996.)

But the fee being vested in trustees, and the tenant for life happening also to be lessee for life in a different interest, the trustees were held to be rightly served, and their costs were allowed: (*Re Finch*, 1 W. N. 93; 14 L. T. N. S. 394; 14 W. R. 472.)

The costs of service, but not of the appearance, of trustees and remaindermen are ordered to be paid by the company, when the fund in Court represents an estate subject to a suit in equity: (*Wilson v. Foster*, 26 Bea. 398; 5 Jur. N. S. 113; *Hore v. Smith*, 14 Jur. 55; *In re Duke of Cleveland's Estate*, 1 Dr. & Sm. 46; *Ex parte Norfolk Railway Co.*, 1 Dr. & Sm. 48 n.; *Sidney v. Wilmer*, 31 Bea. 338; *Henniker v. Chafy*, 11 Jur. N. S. 919.)

Costs of service, but not of appearance, when allowed.

It is necessary to have an affidavit of service upon such persons: (*Wilson v. Foster*, 26 Bea. 398; 5 Jur. N. S. 113.)

Affidavit of service.

The company ought not to be served with the petition upon an application made after an order directing payment of dividends, for the purpose of obtaining a new order for payment of the dividends to the representatives of the former recipient: (*Ex parte Hordern*, 2 De G. & Sm. 263.)

Service on company.

The costs of serving the governors of Queen Anne's Bounty, who had advanced a portion of the price necessary to complete a reinvestment of money representing glebe land, were disallowed: (*Ex parte Incumbent of Whitfield*, 1 J. & H. 610; 7 Jur. N. S. 909.)

Governors of Queen Anne's Bounty.

And the petitioner, the Bishop of London, who applied for the sanction of the Court to a proposal to buy up a leasehold interest in his own diocese, (see *ante*, p. 211.) was ordered to pay the costs of serving the Church Estates Commissioners, such service being held unnecessary: (*Ex parte Bishop of London*, 2 De G. F. & J. 14; 6 Jur. N. S. 640.)

Church Estates Commissioners and Ecclesiastical Commissioners.

But where, upon the death of a lessee for lives, a petition was presented by his administrator for payment of dividends to him during the lives of the *certain que vie*, the Ecclesiastical Commissioners, in whom the reversion was vested, were properly served, and their costs ordered to be paid by the company: (*Re Brailey*, 1 W. N. 109.)

s. 80 VICT. c. 18. The vendor of the property proposed as a reinvestment should not be served; and, if served, the company will not have to pay the costs: (*Re Dylar*, 1 Jur. N. S. 975.)

Bishop.

Where the reinvestment required the consent of the ordinary, the costs of the bishop's appearance at all proceedings were ordered against the company: (*Re Vicar of Creech St Michael*, 21 L. J. (Ch.) 677.)

Persons whose names stand in heading of account to be served, but no costs.

And where the account is headed with the names of certain persons, they must be served, but the costs of their appearance will not be allowed: (*Re Justices of Coventry*, 19 Bea. 158.)

Receiver.

The costs of the appearance of a receiver appointed in a suit, and those of the incumbrancers, (although they might have been made co-petitioners,) were held to be payable by the company: (*Re Nash*, 25 L. J. (Ch.) 20; 19 Jur. 1082; 4 W. R. 28; but see *Re Smith*, 19 L. J. (Ch.) 56; 6 R. C. 150, where incumbrancer's costs were refused.)

Jointress.

And the costs of the appearance of a jointress and her incumbrancers on a life tenant's petition were refused: (*Re Webster*, 2 Sm. & Giff. vi.)

Incumbrancers.

It was, however, held in a later case, that where incumbrancers appear, but do not approve, the costs are not occasioned by "adverse litigation," and consequently fall upon the company: (*Re John Hungerford*, 1 K. & J. 413; 1 Jur. N. S. 845; *Re Brooke*, 30 Bea. 233; *Ex parte Peyton*, 2 Jur. N. S. 1013; *Re Smith*, 14 W. R. 218.)

Vice-Chancellor Stuart, however, in one case, refused to give the costs of incumbrancers on the life estate against the company, but directed them to be added to the debt: (*Re Thomas*, 10 Jur. N. S. 307.)

Distinction where petition asks for discharge of incumbrances out of fund.

The rule seems to be different where the petition does not ask for investment in land or payment of the dividends to the tenant for life, as in the cases already cited, but for payment of the fund in Court, in discharge of incumbrances on the estate or part of it.

Costs of clearing incumbrances of another part of estate.

Thus in some early cases the costs of payment out of Court alone, and not those of paying off incumbrances on another part of the petitioner's land, were allowed: (*Ex parte Earl of Hardwicke*, 17 L. J. (Ch.) 422. This was followed by the Master of the Rolls in *Ex parte Corporation of Sheffield*, 21 Bea. 162; 2 Jur. N. S. 31; and in *Re Hatfield*, 29 Bea. 370; 32 Bea. 252. See also *Ex parte Sheffield Town Trustees*, 8 W. R. 602.)

"Reasonable" charges and expenses."

Whether these costs come within the words "reasonable charges and expenses," see *In re Yeates*, 12 Jur. 279; *Ex parte Trafford*, 2 Y. & C. (Ex.) 522; *Ex parte Lord Northwick*, 1 Y. & C. 166.

Separate appearances.

The company will not have to pay the costs of the appearance of several persons entitled, with the petitioner, to several shares of the fund in Court, if such appearances are vexatious or oppressive: (*Melling v. Bird*, 22 L. J. (Ch.) 599; 17 Jur. 155; *Ex parte Manchester Burial Board*, 1 W. N. 117.)

However, where four persons petitioned, and the rest of those entitled were made respondents and appeared, all the separate appearances were ordered to be paid by the company, the Vice-Chancellor not considering that the cases had gone to the extent, that unless the petitioner has got all parties to join, it follows that the company should not pay their costs: (*Re Long*, 10 Jur. N. S. 417.)

Tenants in common.

Thus tenants in common will not, by appearing separately, forfeit

their right to costs: (*Re Braye*, 9 Jur. N. S. 454; 32 L. J. (Ch.) 432; 8 & 9 Vict. c. 18. 11 W. R. 333.)

So also the costs of different sets of claimants, not being costs of Different sets of adverse litigation, will be allowed: (*Haire v. Lovitt*, 12 L. T. 306.) claimants.

Where several parts of the same estate were taken by three several companies, and three several petitions were presented by the land-owner, the costs of three drafts of the petition were disallowed, and although the Court refused to disallow the costs of more than one petition, still the taxing master was directed to have regard to the fact, that all the petitions had the same object: (*Ex parte Lord Broke*, 11 W. R. 505; 1 N. R. 658.) Several petitions relating to same object.

Seven petitions were presented together by as many owners of interests in the fund in Court. Certain of the petitioners employed the same solicitor. The Court gave the costs of all the petitions, except of those presented by the parties employing the same solicitor: (*In re Nicholls*, 35 L. J. (Ch.) 516; 14 W. R. 475; 1 W. N. 93.) Several petitions by persons entitled to shares.

Under the Lunacy Regulation Act, (16 & 17 Vict. c. 70, s. 75,) it is necessary that the next of kin of the lunatic should be served with notices of all applications relating to the lunatic's property; they are therefore necessary parties to a petition by the committee for the sanction of the Court to a reinvestment approved by the master, and the company must pay their costs: (*Re Briscoe*, 2 De G. J. & Sm. 249; 10 Jur. N. S. 859; see Order, 2 De G. J. & Sm. 251.) Lunatic. Service on next of kin;

So also the company must pay the costs on a similar petition of the heir-at-law: (*Re Walker*, 7 R. C. 129; 15 Jur. 161; *Re Briscoe*, 2 De G. J. and Sm. 249; 10 Jur. N. S. 859.) And heir-at-law.

And the Lord Chancellor having held a reference to the master necessary before the sanction of Court could be given, the company were ordered to pay the costs of such reference: (*Re Taylor*, 1 M. N. & G. 210; 6 R. C. 741.) Reference in such cases.

Payment out to persons who were under disability at the time of the payment into Court, is held to be within this section, and the costs of it payable by the company: (*Ex parte Marshall*, 1 Ph. 560; *Ex parte Slaters*, 5 R. C. 700.) Payment out to persons under disability at the time the land was taken.

The proper form of order for payment of costs does not direct the exception of those caused by litigation between adverse claimants unless the existence of such litigation be suggested: (Seton on Decrees, p. 1083, 3d ed.) Adverse litigation.

This order alone was made in a case where a question arose upon as well as to the persons entitled to a fund in Court: (*Re Tookey*, 1 Drew. 264; 16 Jur. 708.) Form of order.

But where the costs occasioned by adverse litigation are easily separable, as in a case where they had been incurred in consequence of a claim by executors to an appointment, Vice-Chancellor Wood thought it better to separate them at the hearing by an order, directing the costs of the executors to be paid by the petitioners, and all others, except those costs, by the company; but his Honour directed that he should have followed *Re Tookey* (*ubi supra*) in a more complicated case: (*Re Longworth*, 1 K. & J. 1; and see *Re Hangerford*, 1 K. & J. 413, 416; 1 Jur. N. S. 845.)

The Lords Justices, in a case in which a question as to a right of pre-emption (see 4 De G. & J. 503) had been argued on a petition, determined that the common form of order, expressly excepting

8 & 9 VICT. c. 18. costs occasioned by litigation, ought not to be departed from; Sir G. Turner observing, that the words of the exception do not refer to "proceedings," but to "costs:" (*Re Cant*, 1 De G. F. & J. 153; 6 Jur. N. S. 183; *Ex parte Rector of St James, Garlickhithe*, 9 Jur. N. S. 1222; 9 L. T. N. S. 320.)

As to the position of a mortgagee who has been served with the petition, it was explained by Sir W. P. Wood, V.-C., to be merely that of "one of several persons interested in the fund in Court, without any litigation about it;" and therefore incumbrancers being duly served the company must pay their costs: (*Re John Hungerford*, 1 K. & J. 413; 1 Jur. N. S. 845.)

Adverse claimant appearing and consenting.

Where, in consequence of a claim being advanced, and an order first obtained for payment of dividends to the petitioner, a second application, upon which the claimant appears and consents, becomes necessary, the costs of this latter application are not caused by adverse litigation, and must be paid by the company: (*Ex parte Palmer*, 13 Jur. 781.)

Abandonment of claim.

And where one of two claims to the property was abandoned, but the price had nevertheless been paid into Court, the Lords Justices held that there was sufficient ground for this step, and that the proper order would be that the company should neither pay nor receive costs: (*Re English*, 11 Jur. N. S. 434; 12 L. T. N. S. 561; 13 W. R. 932.)

Company taking conveyance from both disputants.

In another case the company took a conveyance from both disputants, and as the latter were held to come before the Court as vendors, and not as claimants, the company were ordered to pay all the costs: (*Re Butterfield*, 9 W. R. 805.)

Part of the purchase-money having been ordered to remain in Court, to await the decision of certain contested claims, the company will have to pay the costs of an application by the person rightly entitled to have the money paid out to him: (*Ex parte Gardiner*, 3 R. C. 117.)

Discussion of points of construction.

Where upon a petition under the Lands Clauses Act, the construction of a will is discussed, the company will not have to pay the costs of all the persons who claim adversely to each other, but only one set of costs: (*Ex parte Styant, Johnson*, 387; *Re Tookey*, 1 Drew. 264; 16 Jur. 708.)

Nor will the company pay the costs occasioned by the raising of a question as to whether real property has been converted into personalty or not by the fact of a railway company having interfered with it: (*Re Bagot*, 10 W. R. 607;) nor as to right of pre-emption: (*Re Cant*, 4 De G. & J. 503; 1 De G. F. & J. 153; 6 Jur. N. S. 183.)

Where payment out impracticable.

But where it is impracticable, in consequence of a difficulty of construction arising upon a will, to apply for payment of the share to the executor, instead of to the person absolutely entitled to it, the company must pay the costs of the application: (*Re Clarke*, 6 W. R. 812.)

Even though similar applications as to other shares might become necessary: (*Ibid*.)

The Court will not allow payment of the fund to trustees for sale: (*Re Horwood*, 3 Giff. 218; *Re Faversham Charities*, 10 W. R. 291; 5 L. T. N. S. 787; *Re East*, 2 W. R. 111; 22 L. T. 197;) but will order the costs of investment of the fund to be paid by the company: (*Re Horwood*, 3 Giff. 218.)

Adverse Litigation—Costs of Several Investments. 245

Two persons claimed as co-heirs under an ultimate devise to the right heirs of a testator; the company were ordered to pay the costs of two petitions presented by them, but not of affidavits filed by them in support of their claims, as being a *litis contestatio*: (*Re Spooner*, 1 K. & J. 220.)

Two petitions by co-heirs.

Executor's costs of applying for an apportionment of a dividend are not payable by the company: (*Re Longworth*, 1 K. & J. 1.)

Executor's application for apportionment of dividend.

Where the petitioner had been found not to have a certain leasehold interest, which he had purported to sell to a railway company, and he brought before the Court the persons interested as reversioners in disputing his right to the lease whereby he claimed, a case of adverse litigation arose, and the company were not bound to pay their costs: (*Ex parte Cooper*, 2 Dr. & Sm. 312; 11 L. T. N. S. 661; 11 Jur. N. S. 103; see also *Ex parte Hayne*, 13 W. R. 492; 12 L. T. N. S. 200.)

Bringing before Court parties interested in disputing title of petitioner.

Where it appears that title cannot be shown to the whole of the property taken by the company, and an apportionment of the price becomes necessary, the company will not have to pay the costs of such apportionment: (*Re Alston*, 5 W. R. 189; 28 L. T. 337; see also *Re Perks*, 1 Sm. & Giff. 545.)

Apportionment of price.

Two petitions were presented, one by certain church trustees, and another by the attorney-general concerning the application of money paid in for a burial-ground, which had previously been closed by an order in council; and it was decided that the trustees were entitled. Sir W. P. Wood, V.-C., gave out of the fund the costs of the trustees only; all other costs, except those caused by the litigation, to be paid by the company: (*Re St Pancras Burial Ground*, L. R. 3 Eq. 173; 36 L. J. (Ch.) 52.)

Questions as to proper distribution of fund.

Upon a petition for payment out, a question was submitted as to whether the word "issue" in the instrument governing the title must not be read "children." Sir R. Malins, V.-C., did not think that there had been any such adverse litigation as to justify an exception of the costs thus incurred: (*Re Wilson*, 2 W. N. 110.)

Questions of construction of instruments.

Notwithstanding this proviso, in the absence of capricious, vexatious, or unreasonable conduct on the part of petitioners, the costs of several investments of the sum in Court, or of the balance of it, will be allowed: (*Re Woolley*, 17 Jur. 850; 1 W. R. 407; 21 L. T. 149; *Ex parte Provost of Eton*, 3 R. C. 271; where two such applications were not deemed vexatious.)

Costs of several investments allowed where not unreasonable.

Two investments.

In *James v. Lewis*, (2 M. N. & G. 163,) and *Re Merchant Tailors Co.* (10 Bea. 485,) four several investments were allowed.

Four investments.

Where it appears to be for the benefit of the parties, the Court will exercise the discretion given to it by the proviso, and allow the costs of several investments.

Where it is for benefit of parties.

Thus Vice-Chancellor Kindersley gave the costs of a reinvestment, to be paid for out of the balance of the fund in Court, in a small strip of land, lying between two other strips belonging to trustees: (*Re St Bartholomew's Hospital*, 4 Drew. 425.)

So also where the proposed purchase adjoined a former purchase: (*Re Hereford Hay and Brecon Railway Co.*, 13 W. R. 134; 11 L. T. N. S. 335; *Re Brandon*, 1 Dr. & Sm. 162.)

And where the sum to be invested is very small: (*Brandon v. Brandon*, 9 Jur. N. S. 11.)

Where fund very small.

Where it was desired to invest part of the balance in the redemption

Redemption of land-tax upon former purchase.

§ 49 Vict. c. 18. tion of land-tax upon land, previously purchased with other part of the fund in Court, the Master of the Rolls required to be satisfied as to the objection, that it was known at the time of the previous purchase that the land-tax was unredeemed, before he would give the costs of the application : (*Attorney-General v. Haberdashers Co.*, 18 Bea. 608.)

Investment on mortgage to be treated as permanent. And the costs of a petition to invest upon mortgage of real estate, a fund already invested in consols, were allowed, but the new investment was directed to be treated as a permanent one : (*Re Lomax*, 34 Bea. 294.)

CONVEYANCE OF LANDS.

And with respect to the conveyances of lands, be it enacted as follows :

Form of conveyances.

LXXXI. Conveyances of lands to be purchased under the provisions of this or the special act, or any act incorporated therewith, may be according to the forms in the schedules (A.) and (B.) respectively to this act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit ; and all conveyances made according to the forms in the said schedules or as near thereto as the circumstances of the case will admit shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration, or by construction of law, on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned ; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

Remedy where company takes a conveyance from prior incumbrancer with power of sale after notice to subsequent incumbrancer.

Where a company, after treating with one incumbrancer, takes a conveyance from a prior incumbrancer, with a power of sale, it seems that the remedy of the former is not upon a bill for payment of the amount of the incumbrance, or for specific performance, based upon an assumed contract arising out of the notice to treat : (*Hill v. Great Northern Railway Co.*, 5 De G. M. & G. 66 ; 23 L. J. (Ch.) 524 ; reversing 23 L. J. (Ch.) 20.) The proper remedy would seem to be by bill for an injunction to restrain the company from proceeding to take the land without paying compensation.

LXXXII. The costs of all such conveyances shall be borne by the promoters of the undertaking (b), and such costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title (c).

8 & 9 Vict. c. 18.
Costs of conveyances (a).

(a) It may be doubted, in consequence of the case of the *Marquis of Bath*, (4 R. C. 567,) whether the Court has jurisdiction to order the costs of preparing the abstract and of making the conveyance.

Costs of abstract and conveyance.

But see *Re Divers*, (1 Jur. N. S. 995,) where the Court directed a taxation of the costs of the abstract and conveyance, notwithstanding that the latter had become unnecessary, in consequence of the money having been paid in under s. 76.

(b) The words, "all such contracts, sales, and conveyances shall be made at the expense of the company," contained in a special act, were held to include the costs of making out the title: (*Ex parte Trustees of Addey's Charity*, 3 Hare, 22; 3 R. C. 119.)

Costs of making out title.

The costs were also allowed under an act, (5 & 6 W. IV. c. 69,) enabling Poor-law Guardians to acquire land: (*Re Lady Byron*, 4 De G. M. & G. 694.)

(c) Where two persons claimed the property in question, as co-heirs, the costs of investigating the title of other persons who claimed to be heirs, in answer to advertisements issued by order of the Court of Chancery, were allowed: (*Re Spooner*, 1 K. & J. 220.)

Costs of investigating claims.

But not those of the identification of such persons: (*Ibid.*)

Identification of claimants.

And where the heir-at-law is not known, the company must pay the costs of an application for the appointment of a party to convey. It was held that these were costs under s. 82, and not under s. 80, and that the order ought to be drawn up under the former section accordingly: (*Ex parte Cave*, 26 L. T. 176.)

Appointment of a person to convey.

The company will not be liable to the costs of a suit rendered necessary by the death of a vendor before the execution of the conveyance; as, where he has allowed the estate contracted for to descend to an infant heir: (*Midland Counties Railway Co. v. Westcomb*, 2 R. C. 211; 11 Sim. 57; 9 L. J. (Ch.) 324; *Midland Counties Railway Co. v. Caldecott*, 2 R. C. 394;) or, where he has settled the property in strict settlement, so that there is no one to convey: (*Eastern Counties Railway Co. v. Tufnell*, 3 R. C. 133;) or where proceedings under the Trustee Act are necessary in order to obtain a conveyance: (*Re South Wales Railway Co.*, 14 Bea. 418; 15 Jur. 1145; 20 L. J. (Ch.) 534;) but in a recent case the Master of the Rolls said that he thought this case was wrongly decided by him, and ordered a corporation to pay the costs of taking out administration

Costs of suit necessary on account of vendor's death.

Proceedings under Trustee Act.

8 & 9 Vict. c. 18. *de bonis non*, rendered necessary in consequence of the death of executors intestate: (*In re Liverpool Improvement Act*, L. R. 5 Eq. 282; 37 L. J. (Ch.) 111; 16 W. R. 667.)

Where the vendor died after making a will in favour of an infant, the costs of the infant were allowed against the company: (*Re Manchester and Southport Railway Co.*, 19 Bea. 365.)

In case an agreement providing for the "costs incidental to the conveyance" of the property have been entered into, the costs of a suit of this nature being caused by no fault on the part of either the vendor or the company, will be payable by the latter: (*Lake v. Eastern Counties Railway Co.*, 19 L. T. 323; see also *Cresswell v. Haines*, 8 Jur. N. S. 208; *Scott v. Scott*, 11 W. R. 766.)

Costs of apportioning ground rents.

This section does not include the costs of apportioning ground rents, as such costs are not held to be incidental to the conveyance: (*Ex parte Buck*, 1 H. & M. 519.)

These costs are, however, recoverable against the company under s. 80, as consequent on the purchase: (*Ex parte Flower*, L. R. 1 Ch. 599; 14 W. R. 1016.)

Taxation of costs of conveyances (a).

LXXXIII. If the promoters of the undertaking and the party entitled to any such costs (b) shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the Court of Chancery, or by a master in Chancery in *Ireland*, upon an order of the same Court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said Court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation.

Bill of conveyancing costs to be delivered to the company.

Where there is an agreement as to payment of costs.

(a) A proper bill of conveyancing costs should be delivered to the company, as being liable to taxation under this section: (*Re Spence*, 1 K. & J. 220.)

In consequence of the inability of the Court to consider the nature of an agreement for payment of costs upon an application tax under this section, it seems that it will not make an order for reference where such an agreement exists: (*Re Rhodes*, 3 R. C. 51 8 Bea. 224.)

(b) Persons not parties to the conveyance, as, for instance, tenants upon the property to be conveyed, are not, it seems, entitled to apply under this section: (*Marquis of Drogheda v. Great Southern and Western Railway Co.*, 12 Ir. Eq. Rep. 103.)

Persons not parties to conveyance.

ENTRY ON LANDS.

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows:

LXXXIV. The promoters of the undertaking shall not, except by consent (a) of the owners and occupiers, enter upon any lands (b) which shall be required to be purchased or permanently used (c) for the purposes and under the powers of this or the special act, until they shall either have paid to every party (d) having any interest in such lands, or deposited in the bank, in the manner herein mentioned, the purchase-money or compensation (e) agreed or awarded to be paid to such parties respectively for their respective interests therein: Provided always (f) that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days' notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

Payment of price to be made previous to entry, except to survey, &c.

(a) Where there was a conflict of evidence as to whether consent to the entry had been given or not, a sum was ordered to be paid in, "to abide the reward of the referees:" (*Langford v. Brighton, Lewes, and Hastings Railway Co.*, 4 R. C. 69.)

Consent.

(b) Under the Thames Embankment Act, 1862, (25 & 26 Vict. c. 93,) an "easement" is included in the subjects of compensation. But where a plaintiff claimed the privilege of allowing barges to rest upon the mud before his wharf, at low water, he was held not to have such an easement or interest in land under that act as to entitle him to an injunction to restrain the Board of Works from filling up the river in front of his wharf, or to any other relief but that which he could obtain in respect of his property being injuriously affected by the works: *Macey v. Metropolitan Board of Works*, 33 L. J. (Ch.) 377; and see *Temple Pier Co. (Limited) v. Metropolitan Board of Works*, 34 L. J. (Ch.) 262; 13 W. R. 535; 12 L. T. N. S. 369. And see *Pinchin v. London and Blackwall Railway Co.*, 1 K. & J. 34; 5 De G. M. & G. 851.)

Easements.

(c) The mere placing of waggons and material upon the land without the consent of the freeholder, but with that of the occupy-

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- 8 & 9 VICT. c. 18. ing tenants only, was not held to come within the act; and a motion to restrain the defendants from continuing in possession, &c., without proceeding under the act, was considered to have been misconceived, and was refused: (*Standish v. Mayor, &c., of Liverpool*, 1 Drew. 1.)
- Company must settle with all parties before entering. (d) The company are not entitled to enter before settling with all parties interested. Thus, after agreement with the freeholder, but before completion of it, the company having settled with the tenants, were ordered specifically to perform the agreement: (*Inge v. Birmingham, Wolverhampton, and Stour Valley Railway Co.*, 3 De G. M. & G. 658; 1 Sm. & Giff. 347.)
- Specific performance after notice to treat, and company gets title from prior incumbrancer. It would seem, however, that the service of a mere notice to treat under s. 18 (*ante*, p. 158, *et seq.*) would not constitute such a contract to purchase as to entitle a person to whom such notice has been given to specific performance, if the company have found that they can obtain a good title by taking a conveyance from a prior incumbrancer having a power of sale: (*Hill v. Great Northern Railway Co.*, 5 De G. M. & G. 66; 24 L. J. (Ch.) 212.)
- Want of sufficient interest in person from whom possession taken. An injunction will be granted to restrain the company from continuing in possession, when they have obtained their title from a person who turns out to have a limited interest; for instance, where they have treated with a person who is discovered to be only tenant for life, and then have not settled with the remaindermen and mortgagees: (*Perks v. Wycombe Railway Co.*, 3 Giff. 662; or where possession is obtained from the occupying tenants: (*Armstrong v. Waterford and Limerick Railway Co.*, 10 Ir. Eq. Rep. 60;) or from a tenant from year to year: (*Saunders v. Tottenham and Hampstead Railway Co.*, 2 W. N. 132.)
- Entry by agent of the company. For an instance of an entry upon land by an agent of the company, under a mistaken impression that the land has been paid for, not being considered a case for relief against the company, see *Tomlinson v. Manchester and Birmingham Railway Co.*, 2 R.C. 105.
- Remedy in equity: Injunction. The remedy of a landowner in equity, in case of infringement by a railway company of the provisions of this section, is by bill for an injunction to restrain the company from entering upon, or, if they have already entered, from continuing in possession of the land: (*Perks v. Wycombe Railway Co.*, 3 Giff. 662; *Giles v. London, Chatham, and Dover Railway Co.*, 30 L. J. (Ch.) 603; *Robertson v. Great Western Railway Co.*, 1 R. C. 459; *Jones v. Great Western Railway Co.*, 1 R. C. 684; *Armstrong v. Waterford and Limerick Railway Co.*, 10 Ir. Eq. Rep. 50; and see *Hill v. Great Northern Railway Co.*, 5 De G. M. & G. 658; 34 L. J. (Ch.) 212.)
- Payment into Court. But where land leased for seven years was taken, and compensation paid to the landlord, but not to the lessees, it was held that the latter were entitled to have the damages assessed as to the land actually taken; but as it was proved that six months' notice had been given to them by the lessors to quit, they were not entitled to an injunction: (*M' Rae, v. London, Brighton, and South Coast Railway Co.*, 3 W. N. 25.)
- Where perfect justice can be done by simply ordering the money to be paid into Court, the injunction will be granted, subject to such payment in, or such order alone will be made.
- Thus where an agreement had been made to sell to a company

land at so much an acre, and for an additional sum as compensation for severance, with a proviso, that if more land were wanted, the same rate per acre should be given for it, the company were held not to be entitled to take any additional land under the agreement without taking steps to ascertain the amount of compensation for severance with regard to such land; and an injunction was granted, but withheld on the undertaking of the company to take such steps: (*Jones v. Great Western Railway Co.*, 1 R. C. 684.)

And in another case, the company having obtained possession of the land by arrangement with the occupying tenant, without settling with the tenant for life, and the tenant in tail in remainder, a similar order was made: (*Armstrong v. Waterford and Limerick Railway Co.*, 10 Ir. Eq. Rep. 60.)

Where the company entered without notice, and dug out of part of a field earth, which they deposited on another part of the field, it being shown that there was a disposition on the part of the landowner to treat, no injunction was granted, on the company undertaking to pay the probable value into Court: (*Tower v. Eastern Counties Railway Co.*, 3 R. C. 374; and see *Langford v. Brighton, Lewes, and Hastings Railway Co.*, 4 R. C. 69.)

In like manner the Court will, it seems, consider the public injury which would ensue from the stoppage of the works, and will order the company to proceed to a valuation, where upon the strength of mere negotiations, but without any definite agreement as to price, they have entered upon land and commenced to construct the railway: (*Hare v. Cork and Bandon Railway Co.*, 17 L. T. 21.)

Order directing company to proceed to assessment of value.

In a very late case, where the purchase-money remained unpaid, and the line had been actually completed and leased to another company, the Court directed a sale of the land, all parties to be at liberty to bid, and the purchase-money to be paid: (*Sedgwick v. Watford and Rickmansworth Railway Co.*, 36 L. J. (Ch.) 379; 2 W. N. 95.)

Where line completed and leased.

But it seems that simple payment into Court by a day certain would, in general, be ordered: (*Griffiths v. Crystal Palace and South London Railway Co.*, 12 Jur. N. S. 560; 14 L. T. N. S. 753; 1 W. N. 281.)

It will be seen from the cases cited in the notes to s. 85, (*infra*), that the vendor's lien for unpaid purchase-money is, in a proper case, enforceable by sale of the land, notwithstanding other remedies which may be resorted to.

A company having contracted with the ground landlord for the purchase of freehold houses, entered and turned out the weekly tenants who were sub-lessees of the lessees under the ground landlord. The property was then damaged by strangers, who entered and pulled down some of the houses. It was held that the damage was done by the act of the company, and that they must pay the purchase-money into Court, without being allowed the option of giving up possession: (*Pope v. Great Eastern Railway Co.*, L. R. 3 Eq. 171; 36 L. J. (Ch.) 60; 15 L. T. N. S. 239; 15 W. R. 192; and see *Dart's Vendors*, p. 704, 3d ed.)

Damage done to the property by strangers after contract with owner.

Where the possession was obtained from the tenant from year to year, and an agreement was afterwards made with the mortgagee in fee, who, however, was not paid his purchase-money, it was held

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8 & 9 Vict. c. 18. that, although the company were in possession under another title, still they intended to destroy the property, and must therefore pay the money into Court: (*Saunders v. Tottenham and Hampstead Railway Co.*, 2 W. N. 132.)

No injunction where there is a bond or agreement to pay, and a provision for interest in case of delay. (e) No injunction or order to pay into Court will be granted where the company have entered into an agreement or bond to pay the purchase-money on a future day, with interest in case of delay, since they must be held to have entered for the purpose for which the land was sold to them, and since the delay is expressly provided for by the stipulation for interest: (*Pell v. Northampton and Banbury Railway Co.*, L. R. 2 Ch. 100; 36 L. J. (Ch.) 319; 15 W. R. 27; 15 L. T. N. S. 169; *Pryse v. Cambrian Railway Co.*, L. R. 2 Ch. 444; and see 36 L. J. (Ch.) 565; 15 W. R. 604.)

Payment of part of the purchase-money. So also where part only of the purchase-money had been paid, the residue being retained by the company until title should be shown, the company were not restrained in any way, as they were held to have purchased the right of possession at least, by payment of part of the purchase-money: (*Capps v. Norwich and Spalding Railway Co.*, 9 Jur. N. S. 635; 11 W. R. 657; 2 N. R. 51.)

Where line leased to another company. But in another case where a railway company took land, and made a railway upon it, and afterwards leased the line to another company, leaving part of the purchase-money unpaid, it was ordered, on appeal, (*dissentiente* Sir G. Turner, L. J., who thought that a receiver should be appointed,) that the first company should pay the money, and in default that both companies should be restrained from using the land: (*Cosens v. Bagnor Railway Co.*, L. R. 1 Ch. 594; 14 W. R. 1002.)

And in a late case of a similar nature, the Master of the Rolls held that the company to whom the line was leased, was properly brought before the Court; and his Lordship ordered payment of the purchase-money within three months, and declared that the plaintiffs had a lien on the property, with leave, in default of payment, to apply for an injunction, or for a receiver: (*Bishop of Winchester v. Mid-Hants and London and South-Western Railway Companies*, 2 W. N. 259. See further the cases on this subject collected in the notes to s. 85, *post*.)

Payment in respect of part after a counter-notice to take the whole under s. 92. Where a counter-notice to take the whole property under s. 92 has been given by a landowner, the company are not entitled to pay into Court the price of part only; and an injunction restraining them from entering upon the land without depositing the entire price will be awarded: (*Giles v. London, Chatham, and Dover Railway Co.*, 30 L. J. (Ch.) 603; 9 W. R. 587; 7 Jur. N. S. 519; following the principle of *The Governors of St Thomas's Hospital v. Charing Cross Railway Co.*, 30 L. J. (Ch.) 395.)

Tenants are not necessary parties to bill by land-owner. It seems that tenants upon the property contracted to be sold by the freeholder, are not necessary parties to a bill by him for an injunction in consequence of non-payment of the purchase-money: (*Robertson v. Great Western Railway Co.*, 1 R. C. 459.)

Laches. (f) Where the landowner is apprehensive of damage, for which he has not received compensation, being done to his land by a company, he should be very active in obtaining an injunction to restrain the company from doing the damage, for, if he wait until it has been accomplished, and the company have no intention of permanently

he land, he will not be entitled to the interference of the s & 9 Vic. c. 18
(*Fooks v. Wilts, Somerset, and Weymouth Railway Co.*, 5 Hare,
R. C. 210.)

where the company, acting *bonâ fide*, made a mistake as to Mistake.

d taken, and began their works, delay on the part of the
ner, and the public interest that the works should not be
l, were considered valid reasons for the non-interference of
art: (*Wood v. Charing Cross Railway Co.*, 33 Bea. 290.)

re the company have been put under an undertaking, not to Leave to view
re with the property of the plaintiff, without proceeding the works where
he Lands Clauses Act, the plaintiff may obtain an order, if hended. damage is appre-

a breach of the undertaking, to view the works: (*Saul v.*
Metropolitan Railway Co., 2 W. N. 99; 16 L. T. N. S. 169.)

company has entered by consent, and neglects to tender a Remedy at law.

ance or the price of the land, the owner's only remedy at law
ceed upon the award for payment of the compensation. He

treat the company as tenants at will, liable to be turned out
mand of possession, or bring an action of ejectment against
(*Doe d. Hudson v. Leeds, &c., Railway Co.*, 16 Q. B. 796; 20
B.) 486.) The consent cannot be revoked: (*Ibid.*; *Knapp v.*
Chatham, and Dover Railway Co., 32 L. J. (Exch.) 236.)

ne entry is unlawful, ejectment or trespass may be main-
: (*Doe d. Hutchinson v. Manchester, &c., Railway Co.*, 14 M.
387; 15 L. J. (Exch.) 208.)

company makes a permanent tunnel through the soil, without Permanent
ing the surface, (though used as a public highway,) this is an tunnel.

g on the land within the meaning of this section; and if
sation has not previously been made to the owner, trespass
: (*Ramsden v. Manchester, &c., Railway Co.*, 1 Exch. 723;
552; see also *Hosking v. Phillips*, 3 Exch. 168.)

que given by two directors is a payment of the purchase-money
company: (*Taylor v. Clemson*, 11 Cl. & Fin. 610; 3 R. C. 85.)

XXV. Provided also, that if the promoters of the
taking shall be desirous of entering upon and

(a) any such lands (b) before an agreement (c)
have been come to or an award made, or verdict

for the purchase-money or compensation to be paid
em in respect of such lands, it shall be lawful for the

oters of the undertaking to deposit in the bank by
of security (d), as hereinafter mentioned, either the

nt of purchase-money or compensation (e) claimed
y party interested in or entitled to sell and convey

lands (f), and who shall not consent to such entry,
ch a sum as shall by a surveyor (g) appointed by

justices in the manner hereinbefore provided in the
of parties who cannot be found (h) be determined to

be value of such lands, or of the interest therein which
party is entitled to or enabled to sell and convey, and

to give to such a party a bond (i), under the common

Promoters to be
allowed to enter
on lands before
purchase, on
making deposit
by way of security
and giving bond.

s. 85. seal of the promoters if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, with two sufficient sureties (*k*) to be approved of by two justices in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase-money or compensation, as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon, at the rate of five pounds *per centum per annum*, from the time of entering on such lands, until such purchase-money or compensation shall be paid to such party, or deposited in the bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase-money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special act.

Lands injuriously affected.

(a) It may be regarded as settled by the case of *Lister v. Lobley*, (7 A. & E. 124,) that the company may, before making the compensation payable under s. 68 of the Railways Clauses Act, execute works upon their own land, or that of another party, injuriously affecting neighbouring lands, upon which they have not entered: (*Hutton v. London and South-Western Railway Co.*, 7 Hare, 259.)

Lands taken and used without paying compensation.
Easement.

The remedies of the landowner where his land has been taken or used without previously receiving compensation are stated and explained in the notes to s. 84, (p. 249, *et seq.*, *supra*.)

(b) Where an easement is to be regarded as "lands" under the Lands Clauses Act is a question, the cases upon which will be found in p. 193, *supra*.

Not entitled to specific performance after entry under s. 85.

(c) The company are not entitled to go to the Court for specific performance of an agreement with a landowner, after they have entered upon the land, and given a bond under s. 85: (*Bedford and Cambridge Railway Co. v. Stanley*, 2 J. & H. 746; 9 Jur. N. S. 152; 32 L. J. (Ch.) 60; 1 N. R. 162; 11 W. R. 139; 7 L. T. N. S. 477.)

Entry before expiration of powers, but no further step taken.

If a company, in compliance with the provisions of this section, has entered on lands before the expiration of the time for exercising their compulsory powers for taking land, but no further step is taken until after the expiration of that time, the subsequent pos-

J. (Q. B.) 185; 17 Q. B. 840.) The amount of compensation to be ascertained after the expiration of that time, as this is exercise of a compulsory power, (*Doe d. Armitstead v. Northshire Railway Co.*, *ubi supra*;) neither is an entry by the Entry.

after the requisites of this section have been observed, and of the compulsory powers of the company: (*Marquis of Salisbury v. Great Northern Railway Co.*, *ubi supra*.) See further on the effect of the exercise of the compulsory powers after the limited elapsed, s. 123, *post*, and the notes thereon.

property to be taken is in the possession of a receiver appointed by the Court of Chancery, and the matter of the sale to the company have been referred to the master, the company may be entitled to resort to their compulsory powers without the Court: (*Tink v. Rundle*, 10 Bea. 318.)

money paid in under this section "is not finally ascertained, estimated value, in order to secure to the party who owns and who is to part with it, the means by which he may be repaid what may be found due:" (*Per Lord Cottenham, C.*, *ibid.*, 2 M. & G. 357.)

Consequently the ordinary rights of a vendor will not be taken in a person whose land is made the subject of compulsory sale. In a late case, accordingly, he was declared to be entitled to his lien for unpaid purchase-money by sale of the land, if the railway had been opened for public traffic; it was also held that the accepting a security for an unascertained sum would not be the vendor of his remedy; and that the rights of the public could not be used as an excuse by a railway company who have taken and have not paid for it: (*Walker v. Ware, Hadham, and Bedford Railway Co.*, L. R. 1 Eq. 195; 12 Jur. N. S. 18; 35 L. J. 14 W. R. 157; 13 L. T. N. S. 517. See also *Attorney-General v. Bourne and Sheerness Railway Co.*, L. R. 1 Eq. 636; 35 L. J. 14 W. R. 414; 14 L. T. N. S. 92, where an order for sale was made, because the application was by petition under the liberty given by a decree in a suit for specific performance of a contract, whereas it is necessary to establish the lien by bill, bringing in the Court incumbrancers and other parties, before the lien can be enforced.)

The company entered under the powers of the 85th section Subsequent

Assessment of compensation after expiration.
Company cannot act under s. 85 when receiver in possession.

Effect of payment in, &c., under this section.

Vendor's ordinary rights saved.
Enforcement of lien by sale.

8 & 9 VICT. C. 18.

Vendor's lien.

Order for payment, and injunction in default thereof.

After a decree of this nature, it seems that, even where the property has not been, and is not intended to be, used, if default is still made in payment of the purchase-money, the Court will, upon the petition of the landowner, declare his lien, but will not immediately order a sale: (*Heriot v. London, Chatham, and Dover Railway Co.*, 2 W. N. 180; 16 L. T. N. S. 473.)

And in a case where a railway company took land, and made a railway upon it, and afterwards leased the line to another company, leaving part of the purchase-money, it was ordered on appeal, (*dissentiente* Sir G. L. Turner, L. J., who thought that a receiver ought to be appointed,) that the first company should pay the money, and in default that both companies should be restrained from using the land: (*Cosens v. Bagnor Railway Co.*, L. R. 1 Ch. App. 594; 14 W. R. 1002.)

In the next case upon this subject, the company had, by agreement with the landowner, been let into possession of the land, had given him a bond, and made their line over the land, but had failed to pay the money due thereon. It was held, upon an interlocutory motion, that as he had let the company into possession, and they were only using the land for the very purpose for which he sold it to them, he was not entitled to an injunction, though perhaps he might be entitled to an order for a receiver: (*Pell v. Northampton and Banbury Railway Co.*, L. R. 2 Ch. App. 100; 36 L. J. (Ch.) 319; 15 W. R. 27; 15 L. T. N. S. 169.)

So, where a landowner expressly agreed to sell his land upon the terms that the company should pay a deposit, and the whole sum with interest at 4 per cent. if the purchase was not completed within six months, and at 5 per cent. afterwards, the Lords Justices, seeing that the deposit had been paid, that an increased rate of interest had been provided for in case of default, and that the land was used for the purposes for which it was taken, refused, even after a delay of three years, to grant an order for payment of the balance into Court: (*Pryse v. Cambrian Railway Co.*, L. R. 2 Ch. App. 444; and see 36 L. J. (Ch.) 565; 15 W. R. 604.)

Where, however, an agreement for sale and conveyance had been made, possession taken, but the purchase-money left unpaid, Vice-Chancellor Stuart made an order, upon motion for decree, against the company and their lessees, (who were made parties to the bill,) declaring a lien against both companies, with leave, in case the money should not be paid, to apply for an injunction, and for the appointment of a receiver: (*Bishop of Winchester v. Mid-Hants Railway Co.*, L. R. 5 Eq. 17.)

The Master of the Rolls, in another case, upon a bill for specific performance, made an order similar to that in *Walker v. Ware and Hadham Railway Co.*, (*ubi supra*), it appearing that the defendants had accepted the title under the agreement, had taken possession of the land, and made their railway over it: (*Raper v. Crystal Palace and South London Junction Railway Co.*, 3 W. N. 48; 16 W. R. 413.)

Upon motion for decree in another case, where the company had failed in the completion of the contract for sale, an order was made by Sir J. Stuart, V.-C., for specific performance within six months, with interest at 4 per cent., and in default to rescind the contract: (*Forster v. Great Eastern Railway Co.*, 3 W. N. 122.)

And after a decree for specific performance has been made in

it of this nature, there is a clear right on petition to have the lien enforced, and the Court will order an account of what is due, fix a day for payment, and, in default of payment, for sale of the property: (*Williams v. Great Eastern Railway Co.*, 3 W. N. 148; 18 L. N. S. 458; 16 W. R. 821;) or for an injunction to restrain the company from using the land until payment: (*Earl Nelson v. Salisbury & Dorset Railway Co.*, 3 W. N. 180;) but, it seems, that where the line has not been opened for traffic, an order, on motion, for immediate sale would be made in order to enforce the lien previously declared: (*Wing v. Tottenham and Hampstead Junction Railway Co.*, W. N. 190; affirmed on appeal, 3 W. N. 239; 16 W. R. 1098.) Where a company had obtained an act protecting them for a fixed period against all "actions, suits, executions, attachments, or other proceedings," (30 & 31 Vict. c. 209, s. 4,) the enforcement of the lien previously declared was held by the Master of the Rolls as not coming within the clause, but his Lordship intimated some doubt on the subject: (*Wootton v. London, Chatham, and Dover Railway Co.*, W. N. 203.)

Injunction to restrain uses of land.

Where line not opened for traffic: immediate sale.

Enforcement of lien notwithstanding protecting act;

Where a receiver had been appointed, and was made a party to a suit by unpaid vendors for specific performance, the usual decree as above referred to was made, with liberty to apply in the mortgagees' suit for payment of the amount by the receiver in that suit, and liberty to apply generally to enforce the lien: (*Longcroft v. Carmarthen and Cardigan Railway Co.*, 3 W. N. 234.)

Where receiver has been appointed.

The fact of the company having entered under s. 85, does not prevent the landowner from proceeding to have the compensation assessed under s. 68, *ante*, and he may accordingly give notice to the company, requiring them to summon a jury to assess the compensation, as the company had not in fact entered: (*Adams v. London and Blackwall Railway Co.*, 2 M. N. & G. 118; 6 R. C. 271; 2 H. & T. 285; 1 L. J. (Ch.) 557.)

Proceedings under s. 68 consistent with entry under s. 85.

(c) The company must, if they treat with a mortgagor, and if they are cognisant of the existence of a charge upon the property, pay in a sum which will not only secure to the mortgagees their whole interest up to the time stipulated for paying off the mortgage, but also the amount of their loss in consequence of being paid off before that time, and of any difference in the present and the future rate of interest, and must include their costs incurred in consequence of the land having been taken: (*Ranken v. East and West India Docks Co.*, 12 Bea. 298.) See s. 114, *post*.

Deposit to cover all rights and indemnities to which mortgagee is entitled by being paid off before the proper time.

However, in a case where the company, knowing of the existence of an equitable mortgage, entered under s. 85, and gave bonds to the landowners and their mortgagees, the sum awarded for compensation being less than the fund paid into Court, and not large enough to satisfy the mortgage, Sir J. Stuart, V.-C., held that the mortgagees not being parties to the inquiry as to value, were not bound by the proceedings, and his Honour declined to direct a fresh valuation, but ordered the fund in Court to be applied in satisfaction of the mortgage. The Lord Chancellor, however, reversed this decree, and declared that the mortgagees had no lien on the fund, that they were not bound by the inquiry, and were entitled, in default of payment by the company, to an assignment by the landowner and the company of the land com-

Where sum awarded not sufficient to pay off mortgagees.

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s. 92 Vict. c. 18, prised in their security. His Lordship also held that the interest of the mortgagees could not be treated as "omitted to be purchased," under s. 124 of the Lands Clauses Act: (*Martin v. London, Chatham, and Dover Railway Co.*, L. R. 1 Eq. 125; 14 W. R. 24; 13 L. T. N. S. 355; L. R. 1 Ch. App. 501; 14 W. R. 880; 14 L. T. N. S. 814.)

The Court, it seems, will on petition, where a sum less than that ultimately determined as the value of the property has been paid in, order the balance to be deposited: (*Ex parte London, Tilbury, and Southend Railway Co.*, 1 W. R. 533;) or on motion: (*Ashford v. London, Chatham, and Dover Railway Co.*, 1 W. N. 288; 14 L. T. N. S. 787.)

(f) Not only does a landowner not waive his right under s. 92 to oblige the company to take the whole of his property instead of part, by offering to sell part at a certain price, (*Gardner v. Charing Cross Railway Co.*, 2 J. & H. 248; 31 L. J. (Ch.) 181,) but if he require them to take the whole, they cannot pay a deposit or give a bond for part only: (*Giles v. London, Chatham, and Dover Railway Co.*, 1 Dr. & Sm. 406; 30 L. J. (Ch.) 603; *Underwood v. Bedford and Cambridge Railway Co.*; *Dadson v. East Kent Railway Co.*, 7 Jur. N. S. 941.) In *Gibson v. Hammermith Railway Co.* (32 L. J. (Ch.) 337, 344; 9 Jur. N. S. 221; 12 W. R. 1021,) Sir R. T. Kindersley, V. C., said: "I am quite satisfied that, whatever the company are bound to take upon the requisition of the owner or tenant, acting under the rights and privileges of the 92d section, that must be taken into account as valued, if the company exercise their powers under s. 85."

The bond must include, and the company are bound to proceed to the valuation of, all the land comprised in the notice to treat: (*Barker v. North Staffordshire Railway Co.*, 2 De G. & Sm. 55; 5 R. C. 401.)

The bond sufficiently identifies the property taken, by referring to and describing a piece or parcel of land, being part of a larger piece, numbered in the deposited plans: (*Wiley v. South-Eastern Railway Co.*, 1 M. & G. 58; 6 R. C. 100; 1 H. & T. 56.)

By s. 36 of the Railway Companies Act, 1867, (30 & 31 Vict. c. 127,) this section has been amended in the following particulars:—

- (1.) The surveyor to be appointed as in that section provided shall be appointed by the Board of Trade instead of by two justices, and all the provisions of that Act relative to a surveyor appointed by two justices shall apply to a surveyor so appointed by the Board of Trade.
- (2.) The company shall give not less than seven days' notice of their intention to apply to the Board of Trade for the appointment of a surveyor to any party interested in or entitled to sell and convey the lands in question, and not consenting to the entry of the company.
- (3.) The valuation to be made by the surveyor so appointed shall include the amount of compensation for all damage and injury to be sustained by reason of the exercise of the powers conferred by the said section, as far as such damage and injury are capable of estimation.

Upon this section it has been decided that in every case where a railway company intends to enter under the 85th section of the Lands Clauses Act, after the 20th of August 1867, the surveyor

Where sum deposited less than value awarded.

Rights under s. 92 not affected by treating as to part.

If required to take the whole, the company must deposit the value of the whole.

All lands in notice to treat to be valued.

Identification of the property.

Railway Companies Act, 1867, 30 & 31 Vict. c. 127, s. 36: Appointment of surveyor by Board of Trade.

(*Cotter v. Metropolitan Railway Co.*, 10 Jur. N. S. 1014; 12 Q.B. 692.)

re, upon production of the document containing the valuation, appeared by the date of the bond that the money was paid days before the valuation was made, this was not held to state the bond: (*Stamps v. Birmingham, Wolverhampton, and Dudley Railway Co.*, 7 Ha. 251.)

where no agreement has been come to, and the company enter s. 85, they need not give notice of the consequent proceedings which may be taken *ex parte*. It was observed by Lord Cotton, C., that s. 59 of the Lands Clauses Act (*ante*) is referred to in this section, and that s. 59 is a provision in reference to which notice cannot be required; that where notice is required, the Act so expresses it; and that there being a reference to a provision where no notice is required, it is evident that no notice is required in a case coming under s. 85: (*Bridges v. Wilts, &c., and Weymouth Railway Co.*, 4 R. C. 622; 11 Jur. 315; 16 L.J. 335; *Poynder v. Great Northern Railway Co.*, 16 Sim. 3; 30 & 5 R. C. 196; *Langham v. Great Northern Railway Co.*, 18 Q.B. 221; 18 L.J. 321; *Ex parte Great Northern Ry. Co.*, 5 Sm. 486; 5 R. C. 263; 16 L.J. (Ch.) 437.)

The words of the Act of Parliament should be followed as Form of bond. as possible in framing the bond under this section. (See pp.)

and conditioned to pay "on demand" to the plaintiff, his "On demand." executors, administrators, or assigns, or to deposit the purchase money, was not considered to be in conformity with the provisions of the act; and an injunction was granted to restrain the defendants from proceeding under their compulsory powers until executed a bond in the proper form: (*Poynder v. Great North-
western Railway Co.*, 16 Sim. 3; 2 Ph. 330; 5 R. C. 196; *Langham v.
Northern Railway Co.*, 5 R. C. 263; 1 De G. & Sm. 486; 16 Ch.) 437.)

It seems that if land be taken under a bond not framed in accordance with the provisions of the act—as, where it was conditioned for payment to A. B., “his executors, administrators, or assigns, or to pay into the bank for his or their benefit” the purchase-money—the Court would hold that the landowner has the

8 & 9 Vict. c. 18. recognise his title to the land, and the money may remain in the bank until he does the duty he is bound to do—*i. e.*, to provide for other interests in the property.

Bond to pay to A., her heirs, &c., or otherwise, for the benefit of the parties. Where the condition of the bond was that the company should pay to the party, her "heirs, executors, administrators, or assigns, or deposit in the Bank of England, or otherwise, for the benefit of the parties interested," &c., it was held that the bond was not in compliance with the statute: (*Hosking v. Phillips*, 3 Exch. 168; 18 L. J. Ex. 1.) "I conceive," said Parke, B., "that a great difficulty might be imposed on a petitioner in the event of his being obliged to sue on a bond conditioned for payment in any other way than that provided by the Act of Parliament. The 85th clause requires only two modes—either payment to the party himself, or deposit in the Bank of England:" (3 Exch. 181.)

"At any time hereafter." The Court has held that the insertion of the words, "at any time hereafter," in reference to the time of payment, is fatal to the validity of the bond: (*Cotter v. Metropolitan Railway Co.*, 10 Jur. N. S. 1014; 12 W. R. 1021.)

Payment to a lessee, his heirs, &c. It may be doubted whether a condition to pay the compensation for a leasehold to the lessee, his heirs, executors, administrators, or assigns, would be valid: (*Dakin v. London and North-Western Railway Co.*, 3 De G. & Sm. 414.)

Tenants in common. A bond given to several tenants in common jointly is irregular: (*Langham v. Great Northern Railway Co.*, 1 De G. & Sm. 486; 5 R. C. 263; 16 L. J. (Ch.) 437.)

Notice of appointment of sureties. (k) The landowner is not entitled to notice of the appointment or approval of the sureties: (*Poynder v. Great Northern Railway Co.*, 16 Sim. 3; 2 Ph. 330; 5 R. C. 196; *Langham v. Great Northern Railway Co.*, 1 De G. & Sm. 486; 5 R. C. 263; 16 L. J. (Ch.) 437; *Bridges v. Wilts, Somerset, and Weymouth Railway Co.*, 4 R. C. 622; 16 L. J. (Ch.) 335; 11 Jur. 315.)

Sureties to be appointed in all cases. The bond is not valid if executed by the company alone; there must be "two sufficient sureties," whether the promoters form a corporation, or any two of them are acting under the act in their individual character: (*Barker v. North Staffordshire Railway Co.*, 2 De G. & Sm. 55; 5 R. C. 401.)

Upon deposit being made cashier to give receipt.

LXXXVI. The money so to be deposited as last aforesaid shall be paid into the Bank in the name and with the privity of the Accountant-General of the Court of Chancery in England or the Court of Exchequer in Ireland, to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said Court; and upon such deposit being made, the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

XVII. The money so deposited as last aforesaid ^{8 & 9 Vict. c. 18.} shall remain in the Bank, by way of security to the parties, and shall so have been entered upon for the performance of the condition of the bond to be given by the parties of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition of the parties of the undertaking, be ordered to be invested in annuities or Government securities, and accumulated; and on the condition of such bond being fully performed, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, upon a like application (b), to order the money so deposited, or the proceeds of which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such condition is not to be fully performed, it shall be lawful for the said Court to order the same to be applied in such manner as the Court think fit for the benefit of the parties for whose benefit the same shall so have been deposited.

Deposit to remain as a security, and to be applied under the direction of the Court.

It appears from the cases upon this section, that nothing more is required to entitle the company to obtain repayment of their deposit, than that the bond should have been fully performed, after which the vendor will not have any lien for costs upon the deposit: *Stevens*, 2 Ph. 772; 5 R. C. 437; and the Court will not order the payment of conveyancing costs before the return of the deposit: *Great Northern Railway Co.*, 16 Sim. 169; 5 R. C. 269; 5.)

Bond to be fully performed. No order for conveyancing costs until deposit returned.

In the case in which it was agreed that the matter of compensation was to be referred to arbitration, but the vendor objected to the award, and then opposed the payment out of the deposit, which had been made in consequence of his refusal to convey, it was held that he could not repudiate proceedings taken under the act for the benefit, and that the payment out would not be refused, although the landowner was dissatisfied with the award, and was desirous to set it aside: (*Re Fooks*, 2 M.N. & G. 357.)

Where award disputed and money paid in under s. 85, no obstacle to return of deposit.

The Court of Chancery will not order payment out of the deposit without service upon the vendor, or making him a co-petitioner: *Ex parte South Wales Railway Co.*, 6 R. C. 151.)

Vendor to be served or made a co-petitioner;

On the production, however, of an affidavit, that all costs, accrued by the act, had been paid to the vendor, service upon him is not required: (*Ex parte Eastern Counties Railway Co.*, 5 R. C. 141.)

Except upon an affidavit that all vendor's costs paid.

XVIII. If at any time the company be unable, by the closing of the office of the Accountant-General, to obtain his authority in respect of the Court of Chancery in England or the Court of Exchequer in Ireland, to obtain his authority in respect of the

The company may pay the deposit money into the bank by way of security during the time

8 & 9 VICT. c. 18.

that the office of the Accountant-General is closed.

the payment of any sum of money so authorised to be deposited in the Bank by way of security as aforesaid, it shall be lawful for the company to pay into the Bank to the credit of such party or matter as the case may require, (subject nevertheless to being dealt with as hereinafter provided, and not otherwise,) such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being, addressed to the Governor and Company of the Bank in that behalf, request, and upon any such payment being made the cashier of the Bank shall give a certificate thereof; and in every such case, within ten days after the re-opening of the said Accountant-General's office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the Accountant-General, and upon production of such direction at the Bank of *England* the money so previously paid in shall be placed to the credit of the said Accountant-General accordingly, and the receipt for the said payment be given to the party making the same in the usual way for the purpose of being filed at the Report Office.

Penalty on the promoters of the undertaking entering upon lands without consent before payment of the purchase-money.

LXXXIX. If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully (a) enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the Superior Courts: Provided always,

thing herein contained shall be held to subject the owners of the undertaking to the payment of any such sum as aforesaid, if they shall *bonâ fide* and without having paid the compensation agreed or awarded to him in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed entitled thereto, or shall have deposited the same in bank for the benefit of the parties interested in the land or made such deposit by way of security in respect of the same as hereinbefore mentioned, although such person may not have been legally entitled thereto.

The word "wilfully," in this section, applies only to the first part of it, not to the proviso with which it concludes: (*Hutchinson v. Chester, &c., Railway Co.*, 15 M. & W. 314; 15 L. J. (Exch.) The first part, as it imposes a penalty, should be strictly construed; but a proviso, which has the effect of saving parties from enactments, should be liberally construed: (*Per Pollock, J. ibid.*)

A company *bonâ fide*, and without collusion, took possession of lands, and deposited the amount awarded for compensation in the Court of Chancery, but without having performed certain conditions precedent to their right so to deposit it, it was held by the Court of Exchequer that the company were protected by the proviso in this section, from liability to the penalty of £25 a day:

1. On the trial of any action for any such penalty as aforesaid, the decision of the justices under the provision hereinbefore contained shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking.

Decision of the justices not conclusive as to the right of the promoters.

11. If in any case in which, according to the provisions of this or the special act, or any act incorporated with the Act, the promoters of the undertaking are authorised to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands or any other person refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to deliver their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the sheriff shall deliver possession of any such lands accord-

Proceedings in case of refusal to deliver possession of lands.

& 9 VICT. c. 18. ingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any justice for that purpose he shall issue his warrant accordingly.

Parties not to be required to sell part of a house.

XCII. And be it enacted, That no party (a) shall at any time be required (b) to sell or convey to the promoters of the undertaking a part only of any house (c) or other building or manufactory (d), if such party be willing and able to sell and convey the whole thereof (e).

Incapacitated persons and charities may have benefit of s. 92.

(a) It has been decided that a charity, and it seems also any person under disability, may claim the benefit of this section: (*Governors of St Thomas's Hospital v. Charing Cross Railway Co.*, 1 J. & H. 400; 7 Jur. N. S. 256; 30 L. J. (Ch.) 395; 9 W. R. 411; 4 L. T. N. S. 13.)

Party not in occupation of the premises.

Where a sub-lessee of the party claiming under this section is in occupation of the premises, and the party himself cannot be inconvenienced by the fact of the company being unlawfully in possession, the Court will not necessarily grant an injunction to restrain them from continuing in possession, until the legality of it have been tried at law, or they have paid for the whole of the premises under s. 92, but will order a further sum to be paid into Court: (*Dakin v. London and North-Western Railway Co.*, 3 De G. & Sm. 414.)

No landowner compelled to convey part only.

(b) Vice-Chancellor Wood observed that "the word 'required' is 'equivalent to compelled'—no party shall be put under compulsory powers—to sell or convey a part, if he be willing and able to sell or convey the whole. It cannot mean that no landowner shall be served with notice to treat for a part; for it has been repeatedly held that the promoters of an undertaking are at liberty to give notice to treat for a part of a manufactory, or other like property. It must, therefore, mean that no landowner shall be compelled to convey:" (*Gardner v. Charing Cross Railway Co.*, 2 J. & H. 248, 256; 31 L. J. (Ch.) 181.)

So if sum claimed for part, owner may still refuse to sell less than whole.

It was thus decided in that case, that where a company has served a notice to treat for a part of the property, the landowner does not, by claiming a sum for that part, preclude himself, thenceforth and for ever, from insisting that, if such sum be not given for the part, he will require the company to take the whole.

If the company has given notice requiring a part of premises s & 9 Vict. c. 18. within this section, and the owner refuses to sell less than the whole, the company may abandon the purchase; they cannot be compelled to take the whole: (*R. v. London and South-Western Railway Co.*, 12 Q. B. 775; 17 L. J. (Q. B.) 326. See also *R. v. London and Greenwich Railway Co.*, 3 Q. B. 166; *R. v. Sheriff of Middlesex*, Q. B. 744.) In such a case the Court of Queen's Bench refused a mandamus as to that part only of the land in respect of which the notice had been given by the company: (*Ibid.*)

Notice of requiring part does not bind company to take the whole.

After notice to treat under the 18th section, and a counter-notice under the 92d section, there is no necessity for a second formal notice, named according to the 18th section, so as to include the whole of the property comprised in the notice under the 92d section; and after an assent by the company to take the whole, an opportunity must be given to the landowner to agree with the company before a jury is summoned: (*Schwinge v. London and Blackwall Railway Co.*, 3 Sm. & Giff. 30.)

Effect of a counter-notice under s. 92.

It seems that a counter-notice under this section would not amount to a waiver of any legal right which the plaintiffs might possess, and it might be competent for them, notwithstanding their counter-notice, to dispute the validity of the original notice: (*Pinchin v. London and Blackwall Railway Co.*, 1 K. & J. 34, 65, per Wood, V.-C.)

Service of counter-notice no waiver of legal right.

It would be not only contrary to any equitable view of the rights of the parties, but plainly contrary to the actual provisions of the statute, to hold that the notice was determined by the counter-notice, but the real view is simply that it was suspended until it should be ascertained whether or not the railway company were willing to take the whole manufactory: (*Ibid.*, p. 66. And see *Schwinge v. London and Blackwall Railway Co.*, 3 Sm. & Giff. 30; 24 L. J. (Ch.) 405.)

A notice to treat and a counter-notice under this section would be treated as one notice, for the purpose of enabling the jury to assess the value of the whole property: (*Pinchin v. London and Blackwall Railway Co.*, 5 De G. M. & G. 851.)

Notice and counter-notice treated as one notice for assessment before a jury.

A verbal arrangement or understanding between the surveyors of the landowner and the company, that the latter should take the whole of the sites of certain houses, notice to take of part of which had been given, was held to justify the landowner in filing a bill for an injunction to restrain the company from taking possession until the value of the whole sites had been paid into Court: (*Binney v. Hammersmith and City Railway Co.*, 8 L. T. N. S. 161.)

Verbal agreement to take the whole property.

(c) The word "house" in this section has received a construction which has been uniformly acted upon by courts of equity—viz., that it includes everything which would pass by a grant of the house; i.e., the legal construction which would be put upon the word in a legal instrument: (See *Stone v. Commercial Railway Co.*, 9 Sim. 621; 1 R. C. 375.)

"House:" its meaning and extent.

A company requiring part of some land which formed a portion of the garden of some almshouses in course of erection, it was held that the land was part of the house within the meaning of s. 92: (*Lord Grosvenor v. Hampstead Junction Railway Co.*, 1 De G. & J. 416.)

Part of garden taken.

- 8 & 9 Vict. c. 18. A railway was intended to pass across the end of a garden attached to a house, so as to cut off a hot-house; it was held that the whole of the garden would have passed by a grant of the house, in consideration of a sum of money, and that therefore the company must take the whole house: (*Cole v. West End and Crystal Palace Railway Co.*, 27 Bea. 242; 5 Jur. N. S. 1114; *Hewson v. London and South-Western Railway Co.*, 8 W. R. 467; 2 L. T. N. S. 369; *King v. Wycombe Railway Co.*, 28 Bea. 104; 6 Jur. N. S. 239; *St Thomas's Hospital v. Charing Cross Railway Co.*, 1 J. & H. 400; 7 Jur. N. S. 256; 30 L. J. (Ch.) 395; 9 W. R. 411; 4 L. T. N. S. 13. See *Thomas v. Daw*, L. R. 2 Ch. App. 1.)
- Part of garden and a hot-house cut off. And even where the houses, the land in front of which was taken by the company, and was intended to be laid out as gardens, were unfinished, and had become dilapidated, the 92d section was held to be applicable: (*Alexander v. Crystal Palace Railway Co.*, 30 Bea. 556.)
- Unfinished and dilapidated houses. And where a proprietor of a house and garden held them under two demises, the house and part of the garden under one demise, and the other part of the garden under the other, the company were obliged to take the whole: (*McGregor v. Metropolitan Railway Co.*, 14 L. T. N. S. 354.)
- Property held under two separate demises. But land adjoining or forming part of a garden, but as to which the plaintiff has merely a right under certain circumstances to demand a lease, is not part of the "house," so as to entitle him to the privilege given by s. 92: (*Chambers v. London, Chatham, and Dover Railway Co.*, 8 L. T. N. S. 235; 1 N. R. 517.)
- Interest of land-owner in the land. Nor does this section apply in a case where the land taken by the company is separated by a road from the rest of the residence which the owner of such land requires the company to take: (*Fergusson v. London and Brighton Railway Co.*, 33 Bea. 103; 11 W. R. 1088; *Pulling v. London, Chatham, and Dover Railway Co.*, 10 Jur. N. S. 665; 33 L. J. (Ch.) 505; 12 W. R. 770, 969; 10 L. T. N. S. 393, 740.)
- S. 92 not applicable where part taken is separated from the house by a road, &c. In the last-mentioned case the field adjoined the grounds of the house, but was composed of two fields lately thrown together and held under separate leases. And in the most recent case on this subject the company were not required to take the whole premises where they required only a field on the other side of a road, and upon which there were a cow-house, a loose-box, and a cottage, occupied by the owner's grooms: (*Steele v. Midland Railway Co.*, L. R. 1 Ch. App. 275.)
- It should be noticed that in *Fergusson v. London and Brighton Railway Co.*, in *Steele v. Midland Railway Co.*, and in *Pulling v. London, Chatham, and Dover Railway Co.*, in each of which there was an appeal, Sir J. L. Knight-Bruce, L. J., disagreed with the other Lord Justice, and was disposed to give a wider construction to the language of s. 92.
- Curtilage. In a late case, Sir G. M. Gifford, V.-C., held that a piece of land used with a public-house, and especially convenient for access to the front door of the house, was part of the curtilage of the house, and that the company could not take it without taking the entire premises: (*Marson v. London, Chatham, and Dover Railway Co.*, L. R. 6 Eq. 101.)
- Easement. It was doubted by the Lord Chancellor, in *Pinchin v. London and*

Blackwall Railway Co., (5 De G. M. & G. 851, 861,) whether a notice to treat for the acquisition of a mere easement is within the Lands Clauses Act, so as to entitle the landowner over whose property the easement is demanded to the benefit of the 92d section.

The introduction into the special act of a protecting clause, providing that certain accommodation works shall be constructed, or that the working of the line shall be subject to certain regulations for the benefit of a neighbouring landowner, will not exclude the application of the 92d section of the Lands Clauses Act.

Protecting clauses in special act do not exclude application of this section.

Thus where a special act contained a provision that if the railway passed through certain pieces of land, the railway should in such places be arched over so as to afford a communication between the severed lands, it was held that this provision did not exclude the operation of s. 92: (*Sparrow v. Oxford, Worcester, and Wolverhampton Railway Co.*, 2 De G. M. & G. 94; 9 Hare, 436.)

And where land belonging to a hospital and forming part of the hospital garden was taken, the company were held bound to take the hospital also, although clauses had been inserted in the special act, limiting the speed of trains in passing the hospital grounds to six miles an hour, restraining the use of the steam-whistle, &c.: (*Governors of St Thomas's Hospital v. Charing Cross Railway Co.*, 1 J. & H. 400; 7 Jur. N. S. 256; 30 L. J. (Ch.) 395; 9 W. R. 411; 4 L. T. N. S. 13.)

It is not competent for the company to endeavour to evade the provisions of this section by proposing to make a tunnel under the property in question instead of passing over it: (*Sparrow v. Oxford, Worcester, and Wolverhampton Railway Co.*, 9 Hare, 436; 2 De G. M. & G. 94; 21 L. J. (Ch.) 731.)

Company cannot evade their liability under s. 92 by changing their plan.

(d) It is not necessary that a piece of land should be covered with buildings in order to be part of a "manufactory" under this section; it seems that it need only be surrounded by or within the wall of that which is called the manufactory: (*Sparrow v. Oxford, Worcester, and Wolverhampton Railway Co.*, 9 Hare, 436; 2 De G. M. & G. 94, where the land was within the walls of certain tin-plate works, and was used for the deposit of rubbish and ashes.)

"Manufactory:" land within the walls of the manufactory.

And where the plaintiff was in the habit of using as warehouses certain cottages situated on the other side of the road, opposite to his dwelling-house and the rest of the manufactory, the company was not allowed to take the cottages without taking the whole manufactory: (*Spackman v. Great Western Railway Co.*, 1 Jur. N. S. 790.)

Cottages on opposite side of the road used as warehouses.

But a dust-contractor was held (on appeal, reversing the decision of Vice-Chancellor Wood) not entitled to oblige the Metropolitan Board of Works to take the whole of the premises upon which he carried on his business, where the Board required only a part called the "tot-shop," on the ground that it was not part of a "manufactory," although the plaintiff was in the habit of sorting the rubbish and subjecting it to various manufacturing processes: (*Reddin v. Metropolitan Board of Works*, 10 W. R. 726, 764.)

Premises of dust-contractor.

Where a railway company had given notice to take certain premises forming part of the plaintiff's salt-works or brine-pits, an injunction was, on appeal, refused to restrain them from taking less than the whole, subject to the opinion of a court of law whether

Salt-works and brine-pits.

8 & 9 VICT. c. 18. the parts taken were parts of a "manufactory:" (*Barker v. North Staffordshire Railway Co.*, 2 De G. & Sm. 55: 5 R. C. 401.)

Building of arch over property is sufficient to give right under s. 92: (e) It would seem that where a company desire to make an arch over a person's land, whether for his own accommodation or for the purpose of carrying their line over it, it is immaterial that no land has to be taken from him in order to construct the arch, and his right under this section would not be affected by this circumstance: (*Sparrow v. Oxford, Worcester, and Wolverhampton Railway Co.*, 2 De G. M. & G. 94; 9 Hare, 436; *Pinchin v. London and Blackwall Railway Co.*, 1 K. & J. 34.)

Or a bridge.

The fact that the landowner is engaged in a business which requires that the upper stratum of air and light should not be obstructed, is sufficient to entitle him to oblige the company to take his whole manufactory, if they wish to treat with him for the right to throw a bridge over part of his works: (*Pinchin v. London and Blackwall Railway Co.*, 1 K. & J. 34, 43.)

In a recent case where a railway company passed over a small piece of land, and thereby would have to cross a goit conveying water out of a river for the supply of the plaintiff's manufactory, and to take a mill-house and a set of shuttles which regulated the flow from the river into the goit, and also a bridge crossing the goit over the shuttles, it was held that the goit, mill-house, bridge, and shuttles were "part of a manufactory," and an injunction was granted, the plaintiff, however, being ordered to make out his title to the whole manufactory: (*Furniss v. Midland Railway Co.*, L. R. 6 Eq. 473.)

Whether company are bound to take fixtures.

Upon the question whether a railway company, bound to take a whole manufactory, is also bound to take the machinery or fixtures upon the premises, it was decided by Sir R. T. Kindersley, V.-C., that those things which are fixtures in the proper sense of the term, although being trade fixtures, come within the exception which entitles the tenant to remove them during the term, and are part of those premises which the tenant has a right to require the company to take, and must be included in the valuation under s. 85: (*Gibson v. Hammersmith Railway Co.*, 32 L. J. (Ch.) 337; 1 N. R. 305.)

Deposit of value of the whole under s. 85 necessary.

After service of a notice and counter-notice under this section the company cannot enter upon any of the land without depositing in the bank the value of the whole property: (*Giles v. London, Chatham, and Dover Railway Co.*, 1 Dr. and Sm. 406; *Gardner v. Charing Cross Railway Co.*, 2 J. & H. 248, 258; *Binney v. Hammersmith and City Railway Co.*, 8 L. T. N. S. 161; *Underwood v. Bedford and Cambridge Railway Co.*; *Dadson v. East Kent Railway Co.*, 7 Jur. N. S. 941.)

Landowner cannot require company to take less than the whole.

The landowner cannot under s. 92 compel the company to take less than the whole of his property: (*Pulling v. London, Chatham, and Dover Railway Co.*, 33 L. J. (Ch.) 505.)

INTERSECTED LANDS.

Intersected lands.

Owners of intersected lands may insist on sale.

And with respect to small portions of intersected land, be it enacted as follows:—

XCIH. If any lands not being situate in a town (a) or

upon (b) shall be so cut through and divided by the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special act, so as to leave, either on both sides or on one side of, a less quantity of land than half a statute acre, if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left, into which the same can be taken, so as to be conveniently occupied therewith; and if the owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left with such adjoining land, by removing the fences and replanting the sites thereof, and by soiling the same in a convenient and workmanlike manner.

As to the meaning and extent of the word "town," see *Carver v. Wycombe Railway Co.*, L. R. 2 Eq. 825, where the words "lands situate within a town," (with reference to s. 128, *post*.) were held to mean lands surrounded by the buildings which constitute a town.

It was also held, in the last-cited case, that, in consequence of the meaning of the word "town," lands outside the buildings constituting the town, although within the borough boundary, are within the exception of the 128th section as to "lands built upon, or used for building purposes."

CIV. If any such land (a) shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this special act, or any act incorporated therewith, compellable to make, and if the owner of such lands have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land, and any dispute as to the value of such piece of land, or as to what should be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the jury or the arbitrators, as the case may be,

Promoters of the undertaking may insist on purchase where expense of bridges, &c., exceed the value.

8 & 9 VICT. c. 18. shall, if required by either party, ascertain by their verdict or award the value of any such severed piece of land, and also what would be the expense of making such communication.

Meaning of
"such land" in
this section.

(a) It was decided by the House of Lords in *The Eastern Counties Railway Co. v. Marriage*, (9 H. L. Cas. 32; 31 L. J. (Ex.) 73,) (the head-note in the latter report erroneously omitting the word "not" before "situate,") reversing the decision of the Exchequer Chamber, that the expression "such land" is not restricted to lands "not being situate in a town," (mentioned in s. 93,) but refers to the "small portions of intersected land," mentioned at the heading to the two sections, whether situate in a town or not.

COPYHOLDS.

Copyholds.

And with respect to copyhold lands (a), be it enacted as follows:

Conveyance of
copyhold lands to
be enrolled.

XCV. Every conveyance (b) to the promoters of the undertaking of any lands which shall be of copyhold or customary tenure or of the nature thereof shall be entered on the rolls of the manor of which the same shall be held or parcel; and on payment to the steward of such manor of such fees (c) as would be due to him on the surrender of the same lands to the use of a purchaser thereof he shall make such enrolment; and every such conveyance, when so enrolled, shall have the like effect, in respect of such copyhold or customary lands, as if the same had been of freehold tenure; nevertheless until such lands shall have been enfranchised by virtue of the powers hereinafter contained, they shall continue subject to the same fines, rents, heriots, and services as were theretofore payable and of right accustomed.

Company need
not pay into
Court fines under
Copyhold Act,
1852, (15 & 16
Vict. c. 1, s. 6.)
Fines belong to
the inheritance.

(a) It has been held that under this section the company are not required to pay into Court the fines required to be paid to the lord of the manor by the tenants in cases of enfranchisement under the Copyhold Act, 1852, (15 & 16 Vict. c. 1, s. 6;) that the tenant for life of the manor is not entitled to retain for his own benefit the fines paid in on enfranchisement, but that they ensure for the benefit of the inheritance; * and that the Copyhold Enfranchisement Act, 1858, (21 & 22 Vict. c. 94,) had no bearing on the case: (*Re Wilson*, 2 J. & H. 619; 32 L. J. (Ch.) 191.)

"Grant and re-
lease" of copy-
hold lands under
a form in a
special act for
conveying free-
holds.

(b) Under a special act it was provided that it should be lawful for all persons seised of, or interested in, any lands, to convey the same to the company; and a form of conveyance, adapted, however, by its terms to the grant of freeholds only, was annexed. A

* See s. 73, ante.

holder in fee, holding of the lord of the manor, "granted and assigned" part of his land, according to the prescribed form. It held that the act gave power to pass all the interest of the lord, and that this was effectually done by the conveyance; that the copyholder must be considered to have retained the right to have his heir admitted, in order to continue the inheritance to his grantee for value.

The company being a corporation, and therefore not entitled to admission of the heir, a decree was made that the heir of the grantor should be admitted, but that he should be, on admission, a trustee for the corporation: (*Grand Junction Canal Co. v. Dimes*, 15 Sim. 402.)

(c) The steward of a manor cannot claim a customary fee on admission where copyhold land is taken by a company under this act; must enrol the conveyance on payment of such a fee as would be due to him on a surrender of the lands to the use of a purchaser: (*Cooper v. Norfolk Railway Co.*, 3 Exch. 546; 6 R. C. 94; *Dimes v. Grand Junction Canal Co.*, 9 Q. B. 469; 5 R. C. 34.) And the lord of a manor is not entitled to the payment of any fine upon the execution of a conveyance by a copyholder to a company, or upon the enrolment of it: (*Ecclesiastical Commissioners v. London and South-Western Railway Co.*, 14 C. B. 743; 23 L. J. (C. P.) 177.)

XCVI. Within three months after the enrolment of the conveyance of any such copyhold or customary lands, or within one month after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works, whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then within one month after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect thereof as shall be agreed upon between them and him, and if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement the same shall be determined as in other cases of disputed compensation; and in estimating such compensation the loss in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same, shall be allowed for.

(a) In *The Ecclesiastical Commissioners v. London and South-Western Railway Co.*, (14 C. B. 743; 23 L. J. (C. P.) 177; see notes

272 *Lands Clauses Consolidation Act, 1845, ss. 97, 98.*

8 & 9 VICT. c. 18. to s. 95,) the lord of the manor was held not entitled to compensation under this section, for the loss of a fine on the execution of a conveyance by a corporation to a company, or upon the enrolment of it.

If a company gets a conveyance from the copyholder only of his own "right, title, and interest" in the land, and does not purchase the interest of the land, on the death of the copyholder, no other person being admitted, the lord may seize quousque for want of a tenant, and maintain ejectment and an action for mesne profits against the company: (*Dimes v. Grand Junction Canal Co.*, 9 Q. B. 469.)

Lord of the manor to enfranchise on payment of compensation.

XCVII. Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, the lord of the manor whereof such copyhold or customary lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common soccage; and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid shall be deemed to be enfranchised, and shall be for ever thereafter held in free and common soccage.

Apportionment of copyhold rents.

XCVIII. And if any such copyhold or customary lands be subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part, and the promoters of the undertaking on the other part; and if such apportionment be not so settled by agreement, then the same shall be settled by two justices; and the enfranchisement of any copyhold or customary lands taken by virtue of this or the special act, or the apportionment of such rents, shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other

lands, such last-mentioned lands shall be charged with the remainder only of such rents; and with reference to any such apportioned rents, the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rent shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents.

COMMON LANDS.

And with respect to any such lands being common or waste lands (a), be it enacted as follows:

(a) Or "such lands as shall be of the nature of common" in Scotland. See the Lands Clauses Consolidation (Scotland) Act 1845, (8 & 9 Vict. c. 19,) of which ss. 93-98 are similar to ss. 102-107 of the present act.

XCIX. The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the commoners, as shall be entitled to such right in the soil; and the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled, other than his right in the soil of such lands, shall be determined and paid and applied in manner hereinafter provided with respect to common lands the right in the soil of which shall belong to the commoners; and upon payment or deposit in the bank of the compensation so determined all such commonable and other rights shall cease and be extinguished.

C. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such conveyance; and in

8 & 9 Vict. c. 18.

Common Lands

Compensation for common lands where held of a manor, &c., how to be paid.

Lord of the manor, &c., to convey to the promoters of the undertaking on receiving compensation for his interest.

5 & 9 VICT. c. 18. default of such conveyance it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall have been deposited as aforesaid shall vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject nevertheless to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided.

Compensation for common lands where not held of a manor, how to be ascertained.

CI. The compensation to be paid with respect to any such lands, being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners, as well as the compensation to be paid for the commonable and other rights in or over common lands the right in the soil whereof shall not belong to the commoners, other than the compensation to the lord of the manor, or other party entitled to the soil thereof, in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands, to be appointed as next hereinafter mentioned.

A meeting of the parties interested to be convened.

CII. It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in such lands to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where such meeting is intended to be held, or if

there be no such church, some other place in the neighbourhood to which notices are usually affixed; and if such lands be parcel or holden of a manor, a like notice shall be given to the lord of such manor.

CIII. It shall be lawful for the meeting so called to appoint a committee, not exceeding five in number, of the parties entitled to any such rights; and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties.

Meeting to
appoint a com-
mittee.

CIV. It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable and other rights, and all matters relating thereto, for and on behalf of themselves and all other parties interested therein; and all such parties shall be bound by such agreement; and it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee, or of any three of them, for such compensation, shall be an effectual discharge for the same; and such compensation when received, shall be apportioned (a) by the committee among the several persons interested therein, according to their respective interests, but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or nonapplication thereof.

Committee to
agree with the
promoters of the
undertaking.

(a) Upon a bill filed by a committee of resident freemen, appointed under ss. 102 and 103, to ascertain the right of all parties to purchase-money paid into Court for land over which every resident freeman of the borough had a transferable right annually to turn one head of stock, it was held that the present resident freemen had not such a fee-simple right as to be entitled to have the corpus divided amongst them, but an order was made that the money should be invested in land, to be held in trust for the freemen from time to time resident within the borough, and in the meantime that the money should be invested, and the dividends paid to such resident freemen, at the same time in each year as they had been accustomed to enter upon the enjoyment of their rights of common: (*Nash v. Coombs*, L. R. 6 Eq. 51.)

CV. If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the

Disputes to be
settled as in
other cases.

& 9 VICT. c. 18. same shall be determined as in other cases of disputed compensation.

If no committee be appointed, the amount to be determined by a surveyor.

CVI. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place, or if, taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by a surveyor, to be appointed by two justices as hereinbefore provided in the case of parties who cannot be found.

Upon payment of compensation payable to commoners the land to vest.

CVII. Upon payment or tender to such committee, or any three of them, or if there shall be no such committee, then upon deposit in the bank in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking, freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery in *England* or the Court of Exchequer in *Ireland*, by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested, as it shall think fit.

LANDS IN MORTGAGE.

And with respect to lands subject to mortgage (a), be it enacted as follows:

Scotland.

(a) Or to "any security by real lien, wadset, heritable bond, redeemable bond of annuity, or other right in security" in Scotland. See the Lands Clauses Consolidation (Scotland) Act 1845, (8 & 9 Vict. c. 19,) of which ss. 99-106 are similar to ss. 108-114 of the present act.

CVIII. It shall be lawful (b) for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the special act, and that whether they shall have previously purchased the equity of redemption of such

or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other person, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage be on such lands solely, or jointly with any other lands not so mortgaged for the purposes of the special act, and in order that the promoters of the undertaking may pay or tender to the mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and six months' additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate time, upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

Vice-Chancellor Stuart, in a recent case, where the company, although the existence of an equitable mortgage was well known to the court, had served only the mortgagors, and executed bonds under the special act in favour of both mortgagors and mortgagees, but proposed to assess the compensation by jury, without notice to the mortgagees, held that the mortgagees were not bound by the proceedings; and though his Honour refused to direct a fresh valuation, he ordered payment of the fund in Court, in satisfaction of the mortgage. (*Martin v. London, Chatham, and Dover Railway Co.*, L. R. 145.)

The Lord Chancellor, considering that the fund in Court was regarded merely as security for what might afterwards be determined by the jury, held that the proper course would have been for the company to have given notice to the mortgagees, to treat them as parties interested, and not having done this, the mortgagees could not, though they were aware of the inquiry as to the fund, take part in it, and that they were entitled to the

Where mortgagors only are served.

8 & 9 VICT. C. 18. common relief of an equitable mortgagee,—viz., a declaration of their lien on the property, on account of payment of the debt due to them, and in default, a sale of the property : (*Ibid.*, L. R. 1 (Ch.) 501.)

Deposit of mortgage money on refusal to accept.

CIX. If, in either of the cases aforesaid, upon such payment or tender, any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the bank, in the manner provided by this act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

Sum to be paid when mortgage exceeds the value of the lands.

CX. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee in satisfaction of his mortgage debt so far as the same will extend, and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Deposit of money when refused on tender.

CXI. If, upon such payment or tender as aforesaid

be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall full discharge of such mortgaged lands from all money thereon; and it shall be lawful for the promoters of undertaking, if they think fit, to execute a deed poll, stamped, in the manner hereinbefore provided in the of the purchase of lands by them; and thereupon lands, as to all such estate and interest as were then d in the mortgagee, or any person in trust for him, become absolutely vested in the promoters of the rtaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession; nevertheless, all rights and remedies essed by the mortgagee against the mortgagor, by virtue of bond or covenant or other obligation, other than the to such lands, shall remain in force in respect of so h of the mortgage debt as shall not have been satisfied by such payment or deposit.

XII. If a part only of any such mortgaged lands be required for the purposes of the special act, and if the part required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of the part, and also the compensation, if any, to be paid in respect of the severance thereof or otherwise, shall be

Sum to be paid where part only of mortgaged lands taken.

S & 9 VICT. C. 18. mortgage debt, so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be endorsed on the deed creating such mortgage, and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

Deposit of money
when refused on
tender.

CXIII. If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the bank, in the manner provided by this act in the case of moneys required to be deposited in such bank, and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof, (as the case may be,) and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special act, as he would

otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage. 8 & 9 VICT. c. 18.

CXIV. Provided always, That in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured (a), and under the provisions hereinbefore contained, the mortgagee shall have been required to accept payment of his mortgage-money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the reinvestment of the sum so paid off, such costs in case of difference to be taxed and payment thereof enforced in the manner herein provided with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on reinvesting the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage-money being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision hereinbefore contained.

Compensation to be made in certain cases, if mortgage paid off before the stipulated time.

(a) The company will be restrained from dealing with the land if they, with the knowledge of the existence of a mortgage, treat only with the mortgagor; and where a time is limited for payment of the mortgage-money, they will have to pay into Court, or secure to the mortgagee, the whole value of his interest under this section: (*Ranken v. East and West India Docks Co.*, 12 Bea. 298; 19 L. J. (Ch.) 153.) Mortgagee's interest.

In case the company treat with the mortgagors only, and pay the value of their interest into Court, they will be treated as having acquired the equity of redemption; but the mortgagee will be entitled to the usual foreclosure decree in virtue of his security, and will not be satisfied out of the fund in Court: (*Martin v. Lon-* Treating with mortgagor only.

s & 9 VICT. c. 18. *don, Chatham, and Dover Railway Co.*, L. R. 1 Ch. 501; reversing L. R. 1 Eq. 145.)

RENT CHARGES.

Rent charges.

And with respect to lands charged with any rent-service, rent-charge, or chief or other rent, or other payment or incumbrance not hereinbefore provided for (a), be it enacted as follows:

Scotland.

(a) In the Lands Clauses Consolidation (Scotland) Act 1845, (8 & 9 Vict. c. 19,) of which ss. 108-111 are similar to ss. 115-118 of the present act, the words are, "lands which shall be charged with any feu-duty, ground annual, casualty of superiority, or any rent or other annual or recurring payment or incumbrance, not hereinbefore provided for."

Release of lands from rent-charges.

CXV. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge (b) upon any lands required to be taken for the purposes of the special act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special act, the same shall be determined as in other cases of disputed compensation.

Annuitant's remedy.

(b) If the railway company, in due course, serve a notice to treat upon an annuitant, but subsequently obtain a conveyance of the property from a prior mortgagee, with power of sale, there may be a remedy by injunction; but no such contract is constituted by the service of the notice to treat, as to entitle the annuitant to a decree for specific performance: (*Hill v. Great Northern Railway Co.*, 5 De G. M. & G. 66; reversing 23 L. J. (Ch.) 20. See ss. 18 and 84, ante.)

Release of part of lands from charge.

CXVI. If part only of the lands charged with any such rent-service, rent-charge, chief or other rent, payment, or incumbrance, be required to be taken for the purposes of the special act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, the same shall be settled by two justices; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the land required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

CXVII. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; and if he fail so to do, or if he fail to adduce good title to such charge to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the bank in the manner hereinbefore provided in like cases, and also, if they think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the rent-service, rent-charge, chief or other rent, payment, or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

8 & 9 VICT. c. 18.
Deposit in case
of refusal to
release.

CXVIII. If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or if they be a corporation, shall affix their common seal to a memorandum of such release endorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special act, and if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all courts and elsewhere of the facts therein stated, but

Charge to con-
tinue on lands
not taken.

8 & 9 Vict. c. 18, not so as to exclude any other evidence of the same facts.

LEASES.

Leases.

Where part only of lands under lease taken, the rent to be apportioned.

And with respect to lands subject to leases (a), be it enacted as follows:

CXIX. If any lands shall be comprised in a lease for a term of years unexpired, part only of which lands shall be required for the purposes of the special act, the rent payable in respect of the lands comprised in such lease shall be apportioned (b) between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special act, in the same manner as they would have done in case such part only of the land had been included in the lease.

Proviso against assignment without licence.

(a) Where leaseholds held subject to a proviso not to assign without licence are taken under the Lands Clauses Act, the concurrence of the lessor is required neither to the assignment nor for the apportionment of the rent: (*Slipper v. Tottenham and Hampstead Junction Railway Co.*, L. R. 4 Eq. 112.)

Arbitrator cannot apportion.

(b) The rent must be apportioned in the manner directed by this section. An arbitrator to whom the question of compensation has been referred under this act, has no power to apportion the rent: (*Re Ware and Regent's Canal Co.*, 9 Exch. 395; 7 R. C. 780.)

Tenants to be compensated.

CXX. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those

not required, or otherwise by reason of the execution of the works. S & 9 VICT. c. 18.

CXXI. If any such lands shall be in the possession of any person having no greater interest (a) therein than as tenant for a year or from year to year (b), and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands (c), and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain, or if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special act.

(a) It may be here remarked that the landlord has no power to prevent payment out to the tenant of his compensation, nor has he any lien upon it, and he must proceed by way of distress, to recover arrears of rent: (*Ex parte Carey*, 10 L. T. 37.) Landowner has no lien for rent on tenant's compensation.

Nor has a tenant, who is under notice to quit, any claim upon any part of his landlord's compensation: (*Ex parte Nadin*, 17 L. J. (Ch.) 421.) Nor the tenant on his landlord's.

(b) A lessee who holds under a lease which would not be valid at law, but is good in equity, has a greater interest than that of a tenant from year to year, and is not, if he produce such an instrument, bound to have his interest assessed by two justices under this section: (*Sweetman v. Metropolitan Railway Co.*, 1 H. & M. 543.) Lease void at law but good in equity need not proceed before two justices.

A tenancy from year to year, determinable upon six months' notice, with an agreement that the tenants might remove any buildings erected by them during the tenancy, or if they left them, and the tenancy expired before the end of twenty years, that they should be compensated for them, by the payment of one-twentieth of their value, to be paid in each remaining year of such twenty years, was held to be an interest in respect of which they might have relief in equity: (*Ibid.*)

Where the claimant has no greater interest than as tenant for a year, or from year to year, he must proceed under this section (even though his claim exceed £50,) and cannot have his claim settled by arbitration under sec. 68; the general words of that section being controlled by the present: (*Reg. v. Manchester, &c., Railway Co.*, 4 When tenant must proceed under this section.

8 & 9 VICT. c. 15. EL. & BL. 88; 10 W. R. 717; *Knapp v. London, Chatham, and Dover Railway Co.*, 32 L. J. (Exch.) 236; 11 W. R. 890.) This, however, applies only where some part of the tenant's land is required by the company. If no part is taken, but the tenant's interest is injuriously affected by the company's works, he is entitled to claim compensation, and to have it determined under s. 68, before a jury or arbitrators, and his case does not come within the present section: (*R. v. Sheriff of Middlesex; In re Somers v. Metropolitan Railway Co.*, 31 L. J. (Q. B.) 261; 10 W. R. 717; 8 Jur. N. S. 617.)

A notice to treat under s. 18, is not equivalent to requiring possession: (*R. v. Stone*, 1 L. R. (Q. B.) 529; 35 L. J. (Q. B.) 184; *Burkinshaw v. Birmingham, &c., Railway Co.*, 5 Exch. 475;) and a yearly tenant who has received such a notice has no remedy under this section, though the effect of the notice to treat having been given may be to make his holding precarious and unmarketable: (*R. v. Stone, ubi supra.*) *Quere*, whether the tenant in such a case has a remedy under s. 68: (*Ibid.*)

Where, however, a tenant from year to year received notice from the promoters, requiring him to give up possession at the end of six months, but before the expiration of that period, was informed by them that they did not intend to take possession then, it was held that he was entitled to compensation for whatever expenses he had been put to by the notice: (*R. v. Commissioners of Rochdale Improvement Act*, 2 Jur. N. S. (Q. B.) 861.)

See the distinction between the principle on which the amount of compensation is estimated where lands are taken, and that on which it is estimated where they are injuriously affected, notes to s. 68, *ante*.

For some cases decided under the Hungerford Market Act, with reference to the amount of compensation to which a tenant is entitled when part of his lands are taken, see notes to s. 68, *ante*.

(c) After notice to treat had been served upon a tenant at will, and the company had been allowed to take possession, the Master of the Rolls refused to grant an injunction on a bill filed by a person who had purchased one-ninth of the land, to restrain the company from continuing in possession: (*Carnochan v. Norwich and Spalding Railway Co.*, 26 Bea. 169, following *Deere v. Guest*, 1 My. & Cr. 516, where a similar decree was refused, possession having been obtained from a tenant, although such possession was obtained by circumvention and fraud.)

But where notice was served on a tenant, and the tenancy expired before possession was taken, a new tenant, without notice of the intended railway, was held to be entitled to be served with notice to treat, and a sum was ordered to be paid in, as the estimated value of his interest: (*Carter v. Great Eastern Railway Co.*, 8 L. T. N. S. 197; 9 Jur. N. S. 618.)

If the company give the tenant the ordinary landlord's notice to quit, he will not, it seems, be entitled to any compensation, though he would, if the company proceeded under this section, be entitled to compensation for the value of the term between the time when possession is given up and the time when a regular notice to quit would have expired: (*Reg. v. London and Southampton Railway Co.*, 10 A. & El. 3; 1 R. C. 717.) And if the company after giving a notice to quit, waive the notice, and allow the tenant to hold over

Expiration of
tenancy before
possession
taken.

Where company
gives ordinary
landlord's notice
to quit.

to tenants paid into Court, though the company have made
tlement with the landlord for his interest in the lands in
n: (*Carey v. Great South and Western (Ireland) Railway Co.*,
1. 37.)

XII. If any party, having a greater interest than as
at will, claim compensation in respect of any unex-
term or interest under any lease or grant of any such
the promoters of the undertaking may require such
to produce the lease or grant in respect of which such
shall be made, or the best evidence thereof in his
; and if, after demand made in writing by the pro-
s of the undertaking, such lease or grant, or such
evidence thereof, be not produced within twenty-one
the party so claiming compensation shall be con-
d as a tenant holding only from year to year, and be
ed to compensation accordingly.

Where greater
interest claimed
than from year
to year, lease to
be produced.

EXPIRATION OF COMPULSORY POWERS.

XIII. And be it enacted, That the powers of the pro-
rs of the undertaking for the compulsory purchase or
g of lands for the purposes of the special act shall not
exercised after the expiration of the prescribed period,
f no period be prescribed not after the expiration of
years from the passing of the special act (*b*).

Limit of time for
compulsory pur-
chase (*a*).

By the 11 & 12 Vict. c. 3, it was enacted that application could
ude to the Railway Commissioners (whose functions have since
ed) to extend the time limited for the construction of railway
; and now, by the Railways (Extension of Time) Act, 1868, (31
c. 18, *sup.* Ann. a company, with the assent of its regis-

Extension of
time, (11 & 12
Vict. c. 3.)

31 Vict. c. 18

8 & 9 VICT. c. 18. with a view to discovering whether the line and works will be likely to be completed within the extended time, the Commissioners should be at liberty to examine the books, &c., of the company, and to appoint an officer to inspect the railway.

By s. 15 of the Act of 1868, justices, arbitrators, umpires, and juries, in estimating the compensation to be made by the company to the owners or occupiers of, or persons interested in, lands, are to have regard to and make compensation for the additional damage, if any, sustained by those owners, occupiers, or persons by reason of any extension of time under the act.

By s. 16, contracts for the purchase of land made before the passing of the act are not to be affected as to the time of their completion by any such extension of time.

Jurisdiction in equity.

(b) In a very early case, before the passing of the Lands Clauses Act, where the company had power to deviate from the deposited plans within two years after the date of their act, and a deviation was made one year afterwards, and an extended act passed in this same year gave them an additional year for purchasing property, though not for deviations, it was held that in a proper case the Court would grant an injunction to restrain an excess of their powers by railway companies; but there, as the second deviation (which was the one complained of) was made within two years of the first deviation, they had not passed the time allotted to them by their acts: (*Company of Proprietors of the Navigation of the River Dun v. North Midland Railway Co.*, 1 R. C. 135.)

All steps necessary for purchase not taken before expiry.

It was at first thought that if the compulsory powers expired before the company had taken all the steps necessary for the acquisition of the land, they would be restrained from proceeding to take the land after that time. Thus in *Brocklebank v. Whitehaven Junction Railway Co.*, (15 Sim. 632; 5 R. C. 373; 16 L. J. (Ch.) 471.) where a jury was summoned before, but gave no verdict until after, the expiry of the powers, the Vice-Chancellor granted an injunction against the company, and although the Lord Chancellor had grave doubts as to this decision, and directed a case for the opinion of the common law judges, the law remained in this position until this case was overruled at law by *Regina v. Birmingham and Oxford Railway Co.*, (15 Q. B. 634, 637, n.; 19 L. J. (Q. B.) 453; 6 R. C. 633.) In *Kinnersly v. North Staffordshire Railway Co.*, (6 R. C. 662.) which was after this case, but in which no reference was made to it, an injunction was granted, and a case submitted to a court of law.

Notice to treat given one day before expiry.

And in another case at law, it was held that, even where the notice is given a single day before the time limited for the exercise of the compulsory powers, the company may proceed to complete the purchase after their expiration: (*Marquis of Salisbury v. Great Northern Railway Co.*, 17 Q. B. 840; 21 L. J. (Q. B.) 185; 16 Jur. 740.)

Where the company gave notice, deposited the money, and gave a bond before the expiration of the prescribed period, it was held that "neither their power to purchase, nor their power to enter, was given by the expiration of that period:" (*per* V.-C. Sir George Turner, in *Sparrow v. Oxford, Worcester, and Wolverhampton Railway Co.*, 9 Ha. 436; 7 R. C. 92; 2 De G. M. & G. 94.)

So if a company enter on lands under s. 85, and no step is taken to have the purchase-money assessed, nor any conveyance executed,

powers : (*Reg. v. York, Newcastle, and Berwick Railway Co.*, 1886 ; 20 L. J. (Q. B.) 503.)

Scotch case where a railway company served a notice to treat day before that on which their compulsory powers expired, and afterwards had the land valued, and deposited the amount, and given a bond, it was held that the compulsory powers had exercised within the prescribed time : (*Edinburgh, &c., Railway v. Monklands Railway Co.*, 12 Court of Sess. Cas. 1304.)

where the compulsory powers of the company have expired, a writ of mandamus will not be granted : (*R. v. London and North-Western Railway Co.*, 16 Q. B. 864 ; 20 L. J. (Q. B.) 399.)

By 15 of 5 & 6 Vict. c. 55, the Board of Trade may, where it is necessary for the safety of the public, authorise railway companies to take additional lands for increasing the width of embankments, and the inclination to the slopes of railways, &c. See

7 and 8 of 26 & 27 Vict. c. 92.

So a notice to treat and a counter-notice under s. 92 are not given before the limited time, concluded by the subsequent expiry of the compulsory powers : (*Schwinge v. London and Blackwall Railway Co.*, 3 Sm. & G. 30 ; 24 L. J. (Ch.) 405 ; (*Pinchin v. London and Blackwall Railway Co.*, 5 De G. M. & G. 851.)

Where the company's powers had expired when they gave their notice to treat, and paid the price into Court under s. 85, but they afterwards obtained a new act giving them power to take the land specified in the notice, and gave notice that they intended to take it, but took no further steps and entered into possession, it was held that, though they were not empowered at the time when notice was given to take the land, yet they could, by some proceeding under the second act, get possession, and the motion for an injunction was ordered to stand over, with liberty for the plaintiff to bring an action : (*Williams v. South Wales Railway Co.*, 3 De G. M. & G. 354. See *Tillett v. Charing Cross Bridge Co.*, 26 Bea. 419.)

Master of the Rolls, in Ireland, in a late case, where the company after award made did not go into possession, and their powers expired, refused under the Railways Act (Ireland), 1851, to order the company to lodge the purchase-money. (15 Vict. c. 70.)

It seems from that case that the Court would not even in

Extension of
time by Board
of Trade.

Proceeding
under s. 92 after
expiry.

Extension acts.

Where company
have not entered
before powers
expire.

8 & 9 VICT. c. 18. the contract of withdrawal of opposition to their bill: (*Webb v. Direct London and Portsmouth Railway Co.*, 9 Hare 129.)

Temporary suspension of works. But it seems that an averment by two dissentient shareholders, that after a temporary suspension of the works, during which the compulsory powers had expired, the company resumed the construction of the railway, is not sufficient to sustain an allegation of the illegality of these proceedings: (*Efooks v. South-Western Railway Co.*, 1 Sm. & Giff. 142.)

Company must proceed on notice to recal within reasonable time. In the latest case on the subject of this section, where a railway company served a notice to treat on a landowner, it was held that they must, in order to exercise their powers, come to an agreement with the landowner, or ascertain the price to be paid to him, within reasonable time—that is, within the period fixed by the act for the completion of the line, and when that period has expired without any step being taken beyond the service of the notice and the claim by the owner, the powers of the company to take the land under the notice cease to be operative: (*Richmond v. North London Railway Co.*, L. R. 5 Eq. 352; 37 L. J. (Ch.) 273; 16 W. R. 449; 18 L. T. N. S. 8; affirmed on appeal, 3 W. N. 212.)

In this case the company had two acts, both including the plaintiff's land as subject to the compulsory powers. The Lord Chancellor held, on appeal, (3 W. N. 212,) that the fact that the company had not previously proceeded upon the notice under their former act, showed that they did not then require the land, and that they could not therefore in any case claim to proceed on that notice when they found that they would require the land as coming within the purposes of their second act.

31 Viet c. 18. By the Railways (Extension of Time) Act, 1868, (31 Viet. c. 18,) any railway company may apply to the Board of Trade for the extension by one year of the time limited for the construction of their works. See the act in the Appendix, *post*.

INTERESTS OMITTED TO BE PURCHASED.

And with respect to interests in lands which have by mistake been omitted to be purchased, be it enacted as follows:—

Promoters of the undertaking empowered to purchase interests in lands, the purchase whereof may have been omitted by mistake. CXXIV. If, at any time after the promoters of the undertaking shall have entered upon any lands which under the provisions of this or the special act, or any act incorporated therewith, they were authorised to purchase, and which shall be permanently required for the purposes of the special act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertence (a) have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided within six months after notice of such estate, right, interest, or charge,

in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed then within six months after the right thereto shall have been finally established by law (b) in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase-money or compensation by the promoters of the undertaking, so far as such mesne profits or interest may be recoverable in law or equity; and such purchase-money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this act the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.

(a) It is essential that the omission to purchase any interest shall have arisen "through mistake or inadvertence:" (*Hyde v. Mayor, Aldermen, &c., of Manchester*, 5 De G. & Sm. 249; 16 Jur. 189; *Omission must have been by mistake or inadvertence.*) where land was purchased with reference to plans furnished by a proprietor of land adjoining, and it was afterwards discovered that a narrow strip of land belonged to the vendor, but had been purchased by the company from the neighbouring proprietor as falling within the boundary of his property described in the plans.)

(b) The last-cited case also decides that where there is a special agreement to purchase within six months, this section nevertheless applies, and that it is only necessary that the lands are such as are authorised to be purchased, and that they are purchased under this section within six months after the right has been finally established at law.

CXXV. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators, or justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate, or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

How value of such lands to be estimated.

8 & 9 Vict. c. 18.

Promoters of the undertaking to pay the costs of litigation as to such lands.

CXXXVI. In addition to the said purchase-money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full costs (a) and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the Court in which such litigation took place.

Full costs."

(a) The "full costs" mentioned here are costs as between attorney and client; (*Doe d. Hyde v. Mayor, &c., of Manchester*, 12 C. B. 474.)

SUPERFLUOUS LANDS.

Superfluous lands.

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special act, or any act incorporated therewith, but which shall not be required for the purposes thereof (a), be it enacted as follows:

Lands not wanted to be sold, or in default to vest in owners of adjoining lands.

CXXXVII. Within the prescribed period, or if no period be prescribed, within ten years after the expiration of the time limited by the special act for the completion of the works (b), the promoters of the undertaking shall absolutely sell and dispose (c) of all such superfluous lands, and apply the purchase-money arising from such sales to the purposes of the special act; and in default thereof, all such superfluous lands remaining unsold at the expiration of such period, shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same (d).

Section applies where land is in occupation of tenants.

(a) These words extend to land the reversion to or other partial interest in which has been acquired by the company, and are not confined to lands acquired with the right to immediate possession. The provisions of the section are applicable as well to superfluous land in the occupation of tenants of the company as to superfluous land in the actual possession of the company: (*Moody v. Corbett*, 2 B. & S. 859; 14 R. 1 Q. B. 510; 34 L. J. (Q. B.) 166; 35 L. J. (Q. B.) 161; 14 W. R. 737; 14 L. T. N. S. 568.

Landowner cannot compel a re-

Although the railway company cannot *prima facie* acquire land which is not required for the purposes of the undertaking, the lan-

Sale of Superfluous lands— Vesting in default of Sale. 293

owner who has sold his land for purposes authorised by an act of 8 & 9 VICT. c. 18. Parliament has no remedy, independently of legislative enactment, to compel a reconveyance upon the abandonment of their scheme ^{conveyance upon abandonment of scheme.} by the company: (*Astley v. Manchester, Sheffield, and Lincolnshire Railway Co.*, 2 De G. & J. 453; 27 L. J. (Ch.) 299, 478.)

This section refers only to superfluous lands, and not to the case of a railway being abandoned or given up: (*Smith v. Smith*, L. R. 3 Ex. 282.) ^{Section does not refer to abandonment.}

And if the company, after such abandonment, obtain powers for making another railway, and for acquiring land which they previously purchased for their former scheme, a bill for a reconveyance would be demurrable: (*Ibid.*)

It has been laid down as a principle, that the rights incident to a fee simple, which Parliament compels a landowner to give for a particular purpose, are qualified by the land having been taken compulsorily in order to effect that purpose; and therefore, if used for a different purpose, which is objectionable to the landowner, or injurious to him as interfering with his comfort, he has a right to confine the enjoyment within the essential terms of the contract: (*Bostock v. North Staffordshire Railway Co.*, 3 Sm. & Giff. 283.) ^{Land taken must be used for purposes of the act.}

(b) It may be remarked that the mode of disposing of superfluous lands here provided is adopted by the terms of the Railways Abandonment Act, 1850, (13 & 14 Vict. c. 83,) which by s. 27 limits the time after the issue of the warrant for abandonment (see the act, *post*, App.) to two years. The price, however, is by the same section not to exceed that at which the company purchased the land.

The extension of the time limited for the sale by a railway company of superfluous lands is one of the cases to which a certificate of the Board of Trade is applicable, under s. 3 of "the Railway Companies Powers Act, 1864," (27 & 28 Vict. c. 120.) See the act, *post*, App. ^{Extension of time.}

In 1861, the petitioner brought an action to recover the possession of lands which, under the act, would become vested in him as the owner of adjoining land. In 1863, the company, in promoting another private act, got a clause inserted to the effect that the respective periods limited for the sale of superfluous lands were to be extended for five years from the passing of the act. It was held that this clause of the act of 1863 had not the effect of defeating the interest previously vested in the plaintiff under the provisions of the former act: (*Moody v. Corbett*, 5 B. & S. 859; L. R. 1 Q. B. 510; 35 L. J. (Q. B.) 161; 14 L. T. N. S. 568; 14 W. R. 737; 34 L. J. (Q. B.) 166.) ^{By subsequent act.}

(c) The words "dispose of" contemplate the transfer of the lands to some other person, and not the application of them by the company to a new purpose not necessary for the efficiency of the railway: (*Astley v. Manchester, &c., Railway Co.*, 2 De G. & J. 456.) ^{"Dispose of."}

So where half only of the land taken was used for the line, and over the remainder an accommodation road was made, the original owner was held, by Vice-Chancellor Stuart, entitled to the latter, together with the road, although the ten years had not expired: (*Earl Beauchamp v. Great Western Railway Co.*, 37 L. J. (Ch.) 74; 16 W. R. 241; 17 L. T. N. S. 243; 2 W. N. 258.) But on appeal to the Lords Justices, it was held that the communication which the company had made over the land in question, being made under s. 68 of the Railways Clauses Act, the land over which it was made

5 & 9 Vict. c. 18. was required for the purposes of their line, and was not superfluous land: (3 W. N. 168; 16 W. R. 1155.)

Appropriation of sale-moneys of surplus lands. The sale-moneys of surplus lands are not liable to be appropriated by mortgagees of the "undertaking" of a railway company. See *Gardner v. London, Chatham, and Dover Railway Co.*, L. R. 2 Ch. App. 201; 15 L. T. N. S. 644; 15 W. R. 325; 36 L. J. (Ch.) 323.

Lands "for the purposes of the act." Where by act of Parliament the corporation of London were authorised to make certain street improvements—to take land and to raise money on the credit of it, and to sell superfluous land to pay off the debt—it was held that the act which gave them those powers might be construed favourably to the corporation, (though it seems doubtful whether a railway company would have the same benefit,*) and lands so taken might be treated as lands taken "for the purposes of the act:" (*Galloway v. Mayor and Commonalty of London*, on appeal, L. R. 1 H. L. C. 34; see also 2 De G. J. & Sm. 213; 4 N. R. 77, 422; 5 N. R. 355.)

Land within limits of deviation, but not required. It is not lawful for the company to buy from a person land which happens to be within the limits of deviation, for the purpose of reselling it under these sections to another landowner, for his convenience: (*Vane v. Cockermouth, Keswick, &c., Railway Co.*, 13 L. T. N. S. 821; and, following *Eversfield v. Mid-Sussex Railway Co.*, (32 L. T. 202,) an injunction was granted, where a new road, not authorised by the act to be made, was, nevertheless, made for the benefit of a neighbouring proprietor: (*Dodd v. Salisbury and Yeovil Railway Co.*, 33 L. T. 254; see on appeal, 33 L. T. 311.)

Mode of apportionment amongst adjoining owners. (d) It has been held that the proper mode of apportioning superfluous lands amongst the various adjoining owners is, by drawing a straight line from the point where the boundaries of two adjoining owners meet, to the nearest point of the land actually used by the company for their works, and allotting the land on each side of that line to the respective owners: (*Moody v. Corbett*, 5 B. & S. 859; 34 L. J. (Q. B.) 166; L. R. 1 Q. B. 510; 35 L. J. (Ch.) 161; 14 W. R. 737; 14 L. T. N. S. 568.)

They are not entitled to have the superfluous lands divided between them as tenants in common, nor apportioned between them according to the depth of their land or the limit of the frontage: (*Ibid.*)

Lands to be offered to owners of lands from which they were originally taken, or to adjoining owners.

CXXVIII. Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town (a), or be lands built upon or used for building purposes (b), first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed (c); or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall

* Per Lord Cranworth, L. R. 1 H. L. C. 43.

Lords Justices, 3 Ch. App. 367; 37 L. J. (Ch.) 213; 16 W. R. 3 L. T. N. S. 96.)

The fact that a cottage was in a field, part of the superfluous could not bring lands outside the borough boundary within the on of "lands built upon or used for building purposes:" (*Ibid.*) advertisement offering superfluous land for sale for building as, has been held not to bring the case within the exception: *ry v. London, Brighton, and South Coast Railway Co.*, L. R. 04; 16 W. R. 267; 37 L. J. (Ch.) 90.)

the mere staking out of land for the purpose of making it g land, is not within the exception: (*Blackmore v. South- Railway Co.*, 3 W. N. 224; 16 W. R. 1105.)

the question as to whether the land has been first offered to Question of offer to neighbouring proprietors one of conveyance, not of title.
sions who have the right of pre-emption is one of conveyance, of title; and where the company have acted *bonâ fide*, it of conveyance, not of title.
that a decree of specific performance would be made in their against a purchaser who has raised the objection that such as not made: (*London and Greenwich Railway Co. v. Good- R. C. 507; 13 L. J. (Ch.) 224.*)

re the superfluous land in question was separated from the and of the plaintiffs, by a private road, it was considered that it adjoining" land within the meaning of these sections: (*Coventry lon, Brighton, and South Coast Railway Co.*, L. R. 5 Eq. 104; R. 267; 37 L. J. (Ch.) 90.)

is to be treated as "adjoining," although it comes into con- with the land in question only at a point or corner: (*Black- South-Western Railway Co.*, 3 W. N. 224; 16 W. R. 1105.)

on the construction of this section," said Sir J. Stuart, V.-C., Right of neigh- bouring proprie- tors for the time being to pre- emptio.
ght of pre-emption is not confined to the persons from whom ds are taken, and who were served with the notice to treat, volves on the proprietors for the time being, who have, by mission, the adjoining lands:" (*Carington v. Wycombe Railway R. 2 Eq. 825, 833.*)

a person who holds land which he bought from the railway he is still entitled to the benefit of this section: (*Blackmore*

8 & 9 VICT. C. 18.

if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all Courts be sufficient evidence of the facts therein stated.

Differences as to price to be settled by arbitration.

CXXX. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

Lands to be conveyed to the purchasers.

CXXXI. Upon payment or tender to the promoters of the undertaking of the purchase-money so agreed upon or determined as aforesaid, they shall convey such lands to the purchasers thereof, by deed under the common seal of the promoters of the undertaking, if they be a corporation, or if not a corporation, under the hands and seals of the promoters of the undertaking, or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; and a receipt under such common seal, or under the hands of two of the directors or managers of the undertaking as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase-money in such receipt expressed to be received.

Effect of the word "grant" in conveyances.

CXXXII. In every conveyance of lands to be made by the promoters of the undertaking under this or the special act the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such

grantees, according to the quality or nature of such grants, 8 & 9 VICT. c. 18.
and of the estate or interest therein expressed to be thereby
conveyed, as follows, except so far as the same shall be
restrained or limited by express words contained in any
such conveyance; (that is to say,)

A covenant that, notwithstanding any act or default
done by the promoters of the undertaking, they were
at the time of the execution of such conveyance seised
or possessed of the lands or premises thereby granted
for an indefeasible estate of inheritance in fee simple,
free from all incumbrances done or occasioned by them,
or otherwise for such estate or interest as therein ex-
pressed to be thereby granted, free from incumbrances
done or occasioned by them:

A covenant that the grantee of such lands, his heirs,
successors, executors, administrators, and assigns, (as
the case may be,) shall quietly enjoy the same against
the promoters of the undertaking, and their successors,
and all other persons claiming under them, and be in-
demnified and saved harmless by the promoters of the
undertaking and their successors from all incum-
brances created by the promoters of the undertaking:

A covenant for further assurance of such lands, at the
expense of such grantee, his heirs, successors, execu-
tors, administrators, or assigns, (as the case may be,)
by the promoters of the undertaking, or their succe-
ssors, and all other persons claiming under them:

And all such grantees, and their several successors, heirs,
executors, administrators, and assigns respectively, accord-
ing to their respective quality or nature, and the estate or
interest in such conveyance expressed to be conveyed, may
in all actions brought by them, assign breaches of cove-
nants, as they might do if such covenants were expressly
inserted in such conveyances.

CXXXIII. And be it enacted, That if the promoters of
the undertaking become possessed by virtue of this or the
special act, or any act incorporated therewith, of any lands
charged with the land-tax, or liable to be assessed to the
poors-rate (a), they shall from time to time, until the
works shall be completed and assessed to such land-tax or
poors-rate, be liable to make good the deficiency in the
several assessments for land-tax and poors-rate by reason

Land-tax and
poors-rate to be
made good.

8 & 9 VICT. C. 18. of such lands having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special act; and on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land-tax, they may do so in accordance with the powers in that behalf given by the acts for the redemption of the land-tax.

(a) Though the promoters are liable under this section to make good any deficiency in the poor-rate, caused by land having been taken for the purposes of their works, they are not liable to be rated to the relief of the poor in respect of such land: (*Mayor of London v. St Andrew, Holborn*, L. R. 2 C. P. 574; 36 L. J. M. C. 95; 16 L. T. N. S. 665; 15 W. R. 928.)

Service of notices
upon company
(a).

CXXXIV. And be it enacted, That any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary the solicitor of the said promoters.

(a) This section does not refer solely to proceedings in an action, but to all cases where a summons or notice is required for any purpose: (*Re South Yorkshire, &c., Railway Co.*, 18 L. J. (Q. B.) 333.)

Tender of
amends,

CXXXV. And be it enacted, That if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special act, or any act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action (a); and if no such tender shall have been made it shall be lawful for the defendant, by leave of the Court where such action shall be pending, at any time before issue joined, to pay into Court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into Court.

(a) "According to the decisions upon similar words," says Bayley, J., in *Smith v. Shaw*, 10 B. & C. 284, "a thing is to be considered as done in pursuance of the act when the person who does it is acting honestly and *bonâ fide*, either under the powers which the act gives, or in discharge of the duties which it imposes. Though he may erroneously exceed the powers the act gives, or inadequately discharge the duties, yet if he acts *bonâ fide* in order to execute such powers, or to discharge such duties, he is to be considered as acting in pursuance of the act, and is to be entitled to the protection conferred upon persons while so acting."

8 & 9 VICT. C. 18.
What acts are
done in pursu-
ance of this act.

Where a railway act provided that no action should be brought for anything done or omitted to be done in pursuance of the act, unless the action were commenced within six months next after the act committed, or in case of continuing damage within six months next after the committing such damage should have ceased, it was held that an action of debt to recover the amount of penalties incurred by obstructing a canal was an action for something done in pursuance of the act, and therefore that the limitation clause applied; and also that the time of limitation began to run from the ceasing of the obstruction, and not from the demand and non-payment of the penalties: (*Kennet and Avon Canal Co. v. Great Western Railway Co.*, 7 Q. B. 824; 4 R. C. 90.)

RECOVERY OF PENALTIES.

And with respect to the recovery of forfeitures, penalties, and costs, be it enacted as follows:

Recovery of
Penalties.

CXXXVI. Every penalty or forfeiture imposed by this or the special act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices (a); and on complaint being made to any justice he shall issue a summons requiring the party complained against to appear before two justices at a time and place to be named in such summons; and every such summons shall be served on the party offending, either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such summons, it shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty

Penalties to be
summarily re-
covered before
two justices.

8 & 9 VICT. c. 18. or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit (b).

Remedy by action not taken away.

(a) This does not bar the party entitled to the penalty or forfeiture from his remedy by action: (*Per Cresswell, J., Collinson v. Newcastle, &c., Railway Co., 1 Car. & K. 546.*)

(b) If an act makes the penalty for interrupting a private road "payable to the owner thereof," the tenant of the farm over which the road passes cannot sue for the penalty: (*Ibid.*)

Penalties to be levied by distress.

CXXXVII. If, forthwith upon any such adjudication as aforesaid, the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such justices or either of them shall issue their or his warrant of distress accordingly.

Distress how to be levied.

CXXXVIII. Where in this or the special act, or any act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Application of penalties.

CXXXIX. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poors-rate of such parish, or if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied in aid of the poors-rate of such extra-parochial place, or if there shall not be any poors-rate therein, in aid of the poors-rate of any adjoining parish or district.

Distress against the treasurer.

CXL. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same it may, if the amount thereof do not exceed twenty pounds be recovered by distress of the goods of the treasurer of the

said promoters, and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer or left at his residence; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

CXLI. No distress levied by virtue of this or the special act, or any act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Distress not unlawful for want of form.

CXLII. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special act, or any act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months (a) next after the commission of such offence.

Penalties to be sued for within six months.

(a) In cases decided under a similar provision with respect to actions against justices of the peace for anything done by them in the execution of their office, it has been held that the six months are to be reckoned exclusive of the day of committing the act: (*Clarke v. Bury*, 4 Moore, 465; *Hardy v. Ryle*, 9 B. & C. 603;) and in case of a continuing offence, that they are to be reckoned from the last day of its continuance: (*Massey v. Johnson*, 12 East, 67; *Weston v. Pournier*, 14 East, 491.)

How six months to be reckoned.

CXLIII. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special act, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or

Penalty on witnesses making default.

§ 49 VIOT. C. 13. neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

Form of conviction. CXLIV. The justices before whom any person shall be convicted of any offence against this or the special act, or any act incorporated therewith, may cause the conviction to be drawn up according to the form in the Schedule (C.) to this act annexed.

Proceedings not to be quashed for want of form. CXLV. No proceeding in pursuance of this or the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari (a), or otherwise, into any of the Superior Courts.

Certiorari. (a) The prohibition against removal by certiorari applies only to proceedings within the jurisdiction of the inferior tribunal: (*Reg. v. Lancaster and Preston Junction Railway Co.*, 6 Q. B. 759; *Re Edmundson*, 17 Q. B. 67.) If the jurisdiction is exceeded, a writ of certiorari will lie. In such a case the proceedings are in truth not under the act: (*R. v. Berkley*, 1 Keny. 99.) And when a jury exceeds its jurisdiction as to part, a writ of certiorari will lie as to the whole matter: (*South Wales Railway Co. v. Richards*, 18 L. J. (Q. B.) 310; *Reg. v. Churchwardens, &c., of Hatfield Peverel*, 14 Q. B. 298.) But it must be remembered that the granting of the writ is in the discretion of the Court.

Parties allowed to appeal to Quarter Sessions on giving security. CXLVI. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special act, or any act incorporated therewith, such party may appeal to the general Quarter Sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognisances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the Court thereon.

CXLVII. At the Quarter Sessions for which such notice shall be given the Court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the Court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Court to make such order as they think reasonable.

CXLVIII. Provided always, and be it enacted, That notwithstanding anything herein or in the special act, or any act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special act, or any act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the Metropolitan Police District, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the Metropolitan Police District, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an act passed in the third year of the reign of Her present Majesty, intituled "An Act for Regulating the Police Courts in the Metropolis," and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned act.

Receiver of the Metropolitan Police District to receive penalties incurred within his district.

2 & 3 Vict. c. 71 (a).

8 & 9 Vict. c. 18, (a) S. 45 of 2 & 3 Vict. c. 71 (above referred to) provides that
 2 & 3 Vict. c. 71, "all penalties, forfeitures, and other sums of money imposed,
 s. 45. awarded, or ordered to be paid by any magistrate continued or appointed under the authority of this act, and all sums of money which any person is bound to pay under any recognisance taken before a magistrate, and afterwards forfeited in case of non-payment thereof, may be levied, with the costs of such proceedings, on non-payment, by distress and sale of the goods and chattels of the offender or person liable to pay the same by warrant under the hand of such magistrate, and the overplus (if any) of the money so raised or recovered, after discharging with costs the penalty, forfeiture, or sum ordered to be paid, shall be returned on demand to the party whose goods and chattels shall have been distrained; and in case any such penalty, forfeiture, or sum of money shall not be forthwith paid, it shall be lawful for such magistrate to order the party to be detained in safe custody until return can be conveniently made to such warrant of distress, unless such party shall give security to the satisfaction of the magistrate for his offence at such time and place, not being more than seven days from the time of such detention as shall be appointed for the return of the warrant of distress, and the magistrate is hereby empowered to take such security by way of recognisance or otherwise; but if upon the return of such warrant, it shall appear that no sufficient distress could be had whereupon to levy the said penalty, forfeiture, or sum of money, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of the magistrate, upon the confession of the party or otherwise, that he has not sufficient goods and chattels whereupon such penalty, forfeiture, or sum of money could be levied if a warrant of distress should be issued, it shall be lawful for the magistrate, by warrant under his hand, to commit such party to some common gaol or house of correction within his jurisdiction, there to remain for any time not more than one calendar month, where the sum to be paid shall not exceed £5, and not more than three calendar months in any case, the imprisonment to cease on payment of the sum due."

S. 46. Accounts are to be kept of fees and forfeitures received and delivered quarterly to the receiver, and the amount thereof to be paid to him (s. 46). Penalties and forfeitures made payable to any person other than the informer or any party aggrieved, are to be paid to the receiver (s. 47). No conviction, &c., is to be quashed for informality (s. 49), nor is distress to be unlawful for want of form (s. 51); neither is a petition to recover for any wrongful proceeding done in the execution of the act after tender of amends (s. 52). Twenty days' previous notice in writing must be given of any action, &c., for such wrongful proceeding, and it must be commenced within three calendar months next after the act committed, or in case of continuing damage, within three months next after the doing such damage shall cease (s. 53). An appeal is given to the Quarter Sessions from summary orders or convictions where the penalty is more than £3, or the imprisonment for more than one month (s. 50).

Appeal, s. 50.

Persons giving false evidence to be liable to the penalties of perjury.

CXLIX. And be it enacted, That any person who, upon any examination upon oath under the provisions of this or

the special act, or any act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury. 8 & 9 VICT. c. 18.

ACCESS TO SPECIAL ACT.

And with respect to the provision to be made for affording access to the special act by all parties interested, be it enacted as follows:— *Access to special act.*

CL. The company shall, at all times after the expiration of six months after the passing of the special act, keep in their principal office of business a copy of the special act, printed by the printers to Her Majesty, or some of them, and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also within the space of such six months deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend a copy of such special act so printed as aforesaid; and the said clerks of the peace shall receive, and they and the company respectively shall retain, the said copies of the special act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an act passed in the first year of the reign of her present Majesty, intituled “An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament.” Copies of special act to be kept and deposited, and allowed to be inspected.
7 WILL. IV. & 1 VICT. c. 83.

Sec. 2 of 7 Will. IV. and 1 Vict. c. 83, enacts, “that all persons interested shall have liberty to, and the said clerks of the peace, town-clerks, &c., and every of them are and is hereby required, at all reasonable hours of the day, to permit all persons interested to inspect during a reasonable time, and make extracts from, or copies, of the said maps, plans, sections, books, writings, &c., so deposited with them respectively, on payment by each person to the clerk of the peace, town-clerk, &c., having the custody of any such map, plan, section, book, writing, &c., one shilling for every such inspection, and the further sum of one shilling for every hour during which such inspection shall continue after the first hour, and after the rate of sixpence for every one hundred words copied therefrom.”

And s. 3 provides, “that in case any clerk of the peace, town-clerk, &c., or other person, shall in any matter or thing refuse or

8 & 9 VICT. c. 18 neglect to comply with any of the provisions hereinbefore contained, every clerk of the peace, town-clerk, &c., shall for every such offence forfeit and pay any sum not exceeding the sum of £5; and every such penalty shall, upon proof of the offence before any justice of the peace for the county within which such offence shall be committed, or by the confession of the party offending, or by the oath of any credible witness, be levied and recovered, together with the costs of the proceedings for the recovery thereof, by distress and sale of the goods and effects of the party offending, by warrant under the hand of such justice, which warrant such justice is hereby empowered to grant, and shall be paid to the person or persons making such complaint; and it shall be lawful for any such justice of the peace to whom any complaint shall be made of any offence committed against this act, to summon the party complained of before him, and on such summons to hear and determine the matter of such complaint in a summary way, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing or in print shall have been exhibited or taken by or before such justice; and all such proceedings, by summons without information, shall be as good, valid, and effectual to all intents and purposes as if an information in writing had been exhibited."

Penalty on company failing to keep or deposit.

CLI. If the company shall fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Act not to extend to Scotland.

CLII. And be it enacted, That this act shall not extend to *Scotland*.*

Irish Railway Acts.

By the Railways Act (Ireland), 1851, (14 & 15 Vict. c. 78,) various provisions are made for the appointment by the Commissioners of Public Works of arbitrators for the assessment of compensation and for the payment of sums awarded. The continuance of the act was limited to five years; but by the Railways Act (Ireland), 1860, (23 & 24 Vict. c. 97,) this act was made perpetual, and some further provisions with respect to the deposit of awards, and also with respect to the apportionment of rent-charges and of rents where part only of the land charged or under lease is required were thereby enacted.

By an act of 1867 (30 & 31 Vict. c. 104) the Commissioners of the Treasury are empowered to call for and cause to be inspected, the accounts of any railway company in Ireland.

Act may be amended this session.

CLIII. And be it enacted, That this act may be amended or repealed by any act to be passed in the present session of Parliament.

* See the Lands Clauses Consolidation (Scotland) Act, 1845, (8 & 9 Vict. c. 19;) and see the note to p. 124, *ante*.

SCHEDULES referred to in the foregoing Act.

S & 9 VICT. c. 18.

SCHEDULE (A.)

Schedule (A.)

Form of Conveyance, (s. 81, ante, p. 246.)

I of in consideration of the sum of paid to me [*or, as the case may be, into the Bank of England, or Bank of Ireland*], in the name and with the privity of the Accountant-General of the Court of Chancery, *ex parte* "The promoters of the undertaking" [*naming them, or to A. B. of and C. D. of* two trustees appointed to receive the same], pursuant to the [*here name the special act*], by the [*here name the company or other promoters of the undertaking*], incorporated [*or constituted*] by the said act, do hereby convey to the said company [*or other description*], their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised, or possessed of, or am by the said act empowered to convey, to hold the premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said act. In witness whereof I have hereunto set my hand and seal, the day of in the year of our Lord

SCHEDULE (A) OF THE SCOTCH ACT, (s. 80.)

Schedule (A.)

I of in consideration of the sum of paid to me [*or, as the case may be, into the Bank, (or, to A. B. of and C. D. of* two trustees appointed to receive the same)], pursuant to an act passed, &c., intituled, &c., by the [*here name the company*], incorporated by the said act, do hereby sell, alienate, dispoise, convey, assign, and make over from me, my heirs and successors, to the said company, their successors and assignees, for ever, according to the true intent and meaning of the said act, all [*describing the premises to be conveyed*], together with all rights and pertinents thereto belonging, and all such right, title, and interest in, and to the same as I and my foresaids are or shall become possessed of, or are by the said act empowered to convey. [*Here insert the conditions (if any) of the conveyance, and a registration clause for preservation and diligence, and a testing clause, according to the form of the law of Scotland.*]

SCHEDULE (B.)

Schedule (B.)

Form of Conveyance on Chief Rent, (s. 81, ante, p. 246.)

I of in consideration of the rent-charge to be paid to me, my heirs and assigns, as hereinafter mentioned, by "The promoters of the undertaking" [*naming them*],

8 & 9 VICT. c. 19. incorporated [or constituted] by virtue of the [here name the special act], do hereby convey to the said company [or other description], their successors and assigns, all [describing the premises to be conveyed], together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof, to hold the said premises to the said company [or other description], their successors and assigns, for ever, according to the true intent and meaning of the said act, they the said company [or other description], their successors and assigns, yielding and paying unto me, my heirs and assigns, one clear yearly rent of _____ by equal quarterly [or half-yearly, as agreed upon] portions, henceforth, on the [stating the days], clear of all taxes and deductions. In witness whereof I hereunto set my hand and seal, the _____ day of _____ in the year of our Lord _____

Schedule (B.)

SCHEDULE (B) TO SCOTCH ACT, (s. 80.)

Form of Conveyance in consideration of feu-duty or rent-charge.

I _____ of _____ in consideration of the feu-duty or rent to be paid to me, my heirs and assigns, as hereinafter mentioned, by the [here name the company], established and incorporated by virtue of an act, &c., do hereby dispoise, convey, and make over from me, my heirs and successors, to the said company, their successors and assignees, for ever, according to the true intent and meaning of the said act, all [describing the premises to be conveyed], together with all rights and pertinents thereunto belonging, and all my right, title, and interest in and to the same and every part thereof, they the said company, their successors and assignees, yielding and paying unto me, my heirs and assigns, one clear annual feu-duty or rent of _____ by equal half-yearly portions henceforth on the [stating the days. Here insert conditions of the conveyance, (if any,) and insert a registration clause for preservation and diligence, and a testing clause, according to the form of the law of Scotland.]

Schedule (C.)

SCHEDULE (C.)

Form of Conviction, (s. 144, ante, p. 302.)

to wit.
Be it remembered, That on the _____ day of _____ in the year of our Lord _____ A. B. is convicted before us C., D., two of her Majesty's Justices of the Peace for the County of _____ [here describe the offence generally, and the time and place when and where committed], contrary to the [here name the special act]. Given under our hands and seals, the day and year first above written.

C., D.

THE LANDS CLAUSES ACTS AMENDMENT
ACT, 1860.

(23 & 24 VICT. CAP. 106.)

An Act to amend the Lands Clauses Consolidation Acts (1845) in regard to Sales and Compensation for Land by way of a rent-charge, annual feu-duty, or ground-annual, and to enable Her Majesty's Principal Secretary of State for the War Department to avail himself of the powers and provisions contained in the same Acts.—
(20th August 1860.)

WHEREAS it is expedient to extend the provisions of the Lands Clauses Consolidation Acts, 1845, in regard to sales s & 9 Vict. c. 18. of land, or compensation for damages, in consideration of an annual rent-charge, annual feu-duty or ground-annual, and to enable Her Majesty's Principal Secretary of State for the War Department to avail himself of the powers and provisions contained in the same Act for the purchase of lands wanted for the service of the War Department or for the defence of the realm: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. So much of the tenth section of the Lands Clauses Consolidation Act, 1845, as provides that, save in the case Part of s. 10 of recited act repealed. of lands of which any person is seised in fee or entitled to dispose absolutely for their own benefit, the consideration to be paid for any lands, or for any damage done thereto, shall be in a gross sum, is hereby repealed.

II. The power to sell and convey lands in consideration Ss. 10 and 11 of recited act as to power to sell, &c., lands for an annual rent-charge of an annual rent-charge provided by the tenth section of the said act, and the power to recover such rent-charge

23 & 24 Vict.
c. 106.

and to recover,
extended to all
sales, &c., where
parties are under
disability.

provided by the eleventh section of the said act, are here-
extended to all cases of sale and purchase or compensati-
under the said act where the parties interested in such sa-
or entitled to such compensation are under any disabili-
or incapacity, and have no power to sell or convey such
lands, or to receive such compensation, except under the
provisions of the said act.

Similar proviso
with regard to
lands sold under
s. 10 of 8 & 9
Vict. c. 19.

III. The power to sell and convey lands in consideration
of an annual feu-duty or ground-annual under the tenth
section of the Lands Clauses Consolidation (*Scotland*) Act,
1845, and the power to recover such annual feu-duty or
ground-annual, are hereby extended to all cases of sale or
purchase or compensation under the said act, where the
parties interested in such sale are under any disability or
incapacity, and have no power to sell or convey such lands,
or to receive such compensation, except under the provi-
sions of the said act.

Amount of rent-
charge to be
settled in manner
directed in the
9th section of
recited acts.

IV. In every case of such sale or compensation by any
parties other than parties seised in fee or entitled to dis-
pose absolutely of the lands so sold or damaged, the amount
of such rent-charge, annual feu-duty or ground-annual,
hereinbefore mentioned, shall be settled in the manner
directed in the ninth section of each of the said acts re-
spectively: Provided, that the amount of such annual rent-
charge, annual feu-duty or ground-annual, shall in no case
be less than one-fourth part greater than the net annual
rent received by the parties beneficially interested in such
lands upon an average of the last seven years; and that a
charge of five per cent. on the gross sum estimated or fixed
as aforesaid, by way of compensation for any damage that
may be done to the said lands, shall in all such cases be
added to and shall form a part of the said rent-charge,
annual feu-duty or ground-annual; and that no fine, fore-
gift, grassum, premium, or other consideration in the
nature thereof shall be paid or taken in respect of the lands
so sold or damaged, other than the annual rent-charge,
annual feu-duty or ground-annual, made payable for such
lands: Provided also, that such rent-charge shall be and
remain upon and for the same uses, trusts, and purposes as
those upon which the rents and profits of the land so con-
veyed stood settled or assured at or immediately before the

conveyance thereof, and shall be a first charge on the tolls and rates, if any, payable under the special act. 23 & 24 Vict. c. 106.

V. In case the promoters of the undertaking shall be empowered, by any act or acts relating thereto, to be passed after the passing of this act, to borrow money to an amount not exceeding a prescribed sum, then in the event of the promoters of the undertaking agreeing at any time after the passing of this act with any person under the powers of this act and of either of the acts hereinbefore mentioned, or of either of the said acts, only for the purchase of any lands in consideration of the payment of a rent-charge, annual feu-duty or ground-annual, the powers of the promoters of the undertaking for borrowing money shall be reduced by an amount equal to twenty years' purchase of any rent-charge, annual feu-duty or ground-annual, so for the time being payable.

If lands purchased by way of rent-charge, borrowing powers to be reduced proportionally.

VI. The clauses contained in "The Lands Clauses Consolidation Act, 1845," relating to the purchase of lands by agreement, and to agreements for sale, and conveyances, sales, and releases of any lands or hereditaments, or any estate or interest therein, by parties under disability, shall extend and be applicable to all purchases of land and hereditaments for public purposes which shall be hereafter made by the council of any city or borough, with the sanction of the Commissioners of Her Majesty's Treasury, under the powers for that purpose contained in "The Municipal Corporation Mortgages, &c., Act, 1860."

Certain clauses in 8 & 9 Vict. c. 18, extended to purchases of land, &c., for public purposes.

VII. For the purchase or acquisition of any messuages, lands, tenements, and hereditaments wanted for the service of the Admiralty or of the War Department or for the defence of the realm, it shall be lawful for Her Majesty's Principal Secretary of State for the War Department for the time being to use all or any of the powers and provisions by the Lands Clauses Consolidation Act, 1845, and by the Lands Clauses Consolidation (*Scotland*) Act, 1845, given to promoters of the undertaking, as therein mentioned, and for such purposes the said principal secretary shall be deemed and taken to be the promoters of an undertaking within the meaning of the said act, and all the powers and provisions thereof shall, if used

Power to Secretary for War to use the powers given to promoters of undertakings by 8 & 9 Vict. c. 18.

23 & 24 Vict.
c. 106.

by Her Majesty's Principal Secretary of State for the War Department, be treated as if they were contained in the fifth and sixth *Victoria*, chapter ninety-four, for the purpose of being used and made available by the principal officers of Her Majesty's Ordnance, and had been transferred to the said principal secretary for the time being by the eighteenth and nineteenth *Victoria*, chapter one hundred and seventeen, for the purposes aforesaid: Provided always, that nothing herein contained shall authorise any purchase otherwise than by agreement of any land, except according to the provisions of the twenty-third section of the said act of the fifth and sixth *Victoria*, or prejudice or affect the powers and authorities of the said principal secretary for the time being under the said last-mentioned statutes or either of them.

This act and
8 & 9 Vict.
cc. 18 & 19, to
be construed
together.

VIII. This act shall be read and construed as part of the said Lands Clauses Consolidation Act, 1845, or of the Lands Clauses Consolidation (*Scotland*) Act, 1845, in all matters in which it relates to the said acts respectively; and in citing this act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression of "The Lands Clauses Consolidation Acts Amendment Act, 1860."

THE RAILWAYS CLAUSES CONSOLIDATION
ACT, 1845.

(8 & 9 VICT. CAP. 20.)

An Act for consolidating in one Act certain provisions usually inserted in Acts authorising the making of Railways.—[8th May, 1845.]

WHEREAS it is expedient to comprise in one general Act sundry provisions usually introduced into Acts of Parliament authorising the construction of railways, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: And whereas a bill is now pending in Parliament, intituled "An Act for consolidating in one Act certain provisions usually inserted in Acts authorising the taking of lands for undertakings of a public nature," and which is intended to be called "The Lands Clauses Consolidation Act, 1845:" May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That this act shall apply to every railway which shall by any act which shall hereafter be passed (a) be authorised to be constructed, and this act shall be incorporated with such act; and all the clauses and provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other act which shall be incorporated with such act, form part of such act, and be construed together therewith as forming one act (b).

Operation of
this act con-
fined to future
railways.

(a) With regard to the question whether an act passed subsequently to, and incorporating the general act, but extending powers

Effect of incor-
poration of the
Consolidation

8 & 9 Vict. c. 20. conferred by an act passed previously thereto, has the effect of subjecting the whole undertaking to the operation of the General Consolidation Act, see the notes to s. 5 of the Lands Clauses Act, 1845, *ante*.

Acts in further acts of companies constituted before 1845.

(b) Care should be taken to set out in a bill of complaint, all the clauses of a special act likely to be required for the support of the plaintiff's case; for it has been decided that the Court will not go out of the record, notwithstanding a clause in the special act, that the act is to be a public act, and judicially taken notice of as such: (*Bailey v. Birkenhead Railway Co.*, 12 Bea. 433; 6 R. C. 256; 14 Jur. 119; and see 13 & 14 Vict. c. 21.)

Effect of clause that special act shall be construed as a public act.

Where the special act contained a declaration that it should be judicially taken notice of as a public act, it was held that it could not be treated or construed as a private assurance, so as to constitute a contract between the company and the landowner, for the construction of the works authorised and required to be made by such act: (*Hargreaves v. Lancaster and Preston Railway Co.*, 1 R. C. 416.)

INTERPRETATION OF TERMS.

Interpretations in this act:

And with respect to the construction of this act and of other acts to be incorporated therewith, be it enacted as follows:

"Special act:"

II. The expression "the special act," used in this act, shall be construed to mean any act which shall be hereafter passed authorising the construction of a railway, and with which this act shall be so incorporated as aforesaid;

"Prescribed:"

and the word "prescribed," used in this act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act; and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special act" had been used; and the expression "the lands" shall mean the lands which shall by the special act be authorised to be taken or used for the purposes thereof; and the expression "the undertaking" (a) shall mean the railway and works, of whatever description, by the special act authorised to be executed.

"The lands:"

"The undertaking."

"Undertaking."

(a) As to the nature and extent of the "undertaking," see *per* Lord Cairns, L. J., in *Gardner v. London, Chatham, and Dover Railway Co.*, L. R. 2 Ch. App. 201, 216, 217; 15 W. R. 325; 36 L. J. (Ch.) 323; and *ante*, p. 2, where the passages of his Lordship's judgment upon this subject are set out.

Interpretations in this and the special act.

III. The following words and expressions, both in this and the special act, shall have the meanings hereby assigned

to them, unless there be something in the subject or context repugnant to such construction ; (that is to say,) 8 & 9 VICT. C. 20.

Words importing the singular number only shall include the plural number ; and words importing the plural number only shall include also the singular number :

Words importing the masculine gender only shall include females :

The word "lands" (a) shall include messuages, lands, tenements, and hereditaments of any tenure :

The word "lease," shall include an agreement for a lease :

The word "toll" (b) shall include any rate or charge or other payment payable under the special act for any passenger, animal, carriage, goods, merchandize, articles, matters, or things conveyed on the railway :

The word "goods" shall include things of every kind conveyed upon the railway :

The word "month" shall mean calendar month :

The expression "superior courts" shall mean Her Majesty's Superior Courts of Record at Westminster or Dublin, as the case may require :

The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath :

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town (c) :

The word "sheriff" shall include under-sheriff or other legally competent deputy ; and where any matter in relation to any lands is required to be done by any sheriff or clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace" shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate ; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate :

8 & 9 VICT. c. 20.

"Justice:"

The word "justice" shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter (*d*); and where such matter shall arise in respect of lands, being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" (*e*) shall be understood to mean two justices assembled and acting together:

"Two justices:"

"Owner:"

Where under the provisions of this or the special act any notice shall be required to be given to the owner of any lands, or where any act shall be authorised or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special act, or any act incorporated therewith, would be enabled to sell and convey lands to the company:

"The company:"

The expression "the company" (*f*) shall mean the company or party which shall be authorised by the special act to construct the railway:

"The railway:"

The expression "the railway" (*g*) shall mean the railway and works by the special act authorised to be constructed:

"Board of Trade:"

The expression "the Board of Trade" shall mean the Lords of the Committee of Her Majesty's Privy Council appointed for trade and foreign plantations:

"The bank:"

The expression "the bank" shall mean the Bank of *England*, where the same shall relate to moneys to be paid or deposited in respect of lands situate in *England*, and shall mean the Bank of *Ireland* where the same shall relate to moneys to be paid or deposited in respect of lands situate in *Ireland*:

"Turnpike road," Ireland:

The expression "turnpike road" shall, when applied to any road in *Ireland*, include any road upon which Her Majesty's mails are or shall be carried in mail car-

riages, or such other roads as the Commissioners of ^{8 & 9 VICT. c. 20.} Public Works in *Ireland* shall consider to require arches of greater width or height than by this act is required for public carriage roads:

The expression "surveyor," applied to a road or highway, shall, as to railways in *Ireland*, include the county surveyor: "Surveyor,"
Ireland;

The expression "overseers of the poor," when applied to *Ireland*, shall include the poor-law guardians of the electoral division and the clerk of the guardians of the union through which such railway may pass. "Overseers of
the poor,"
Ireland;

(a) It seems doubtful whether an *easement* may be treated under Easements, the Consolidation Acts, as "land" for the purposes of compensation, &c. See *per Lord Cranworth in Pinchin v. London and Blackwall Railway Co.*, 5 De G. M. & G. 861, 862, and the notes to s. 68 of the Lands Clauses Act, 1845, *ante*, p. 193.

His Lordship thought it clear that rights of way, of common, and of turbary, were not to be so treated: (*Ibid.*) Rights of way,
common and
turbary.

As to the power to acquire an easement for the purpose of making a junction, see the notes to s. 16, *post*. Junctions.

(b) This section "does not in any way limit or restrain the construction of the word tolls,—it does not assume to define it; it merely specifies certain payments which it shall be held to include, even if *per se* they could not be brought within any correct definition of it. Further, it is necessary to extend the construction beyond the strict technical meaning of toll *per se*; for toll *per se*, without the addition of thorough or traverse, or some adjunct applying it to the passage of goods or passengers, would be simply insensible with reference to a railway. It must clearly, therefore, mean, at least, a payment, the consideration of which is the passage of passengers, carriages, or goods on the railway:" (Judgment of the Court of Exchequer, in *Great Northern Railway Co. v. South Yorkshire Railway Co.*, 9 Exch. 644; 7 R. C. 773.) Tolls.

(c) As to the meaning of the word "town," see *Carington v. "Town."* *Wycombe Railway Co.*, L. R. 2 Eq. 825, 833, and the notes to s. 128 of the Lands Clauses Act, 1845, p. 295, *ante*.

(d) This is merely declaratory of the common law that any interested justice is incapacitated from acting, but it does not make interest in the justice an absolute disqualification, so that the objection grounded upon it cannot be waived by consent of the parties. Justices.
Objection on
ground of in-
terest may be
waived.

Therefore when on the hearing of a complaint under s. 58, *post*, an objection to a justice on the ground of interest is waived by the parties, the justice has jurisdiction, and an objection of want of jurisdiction cannot afterwards be raised: (*Wakefield Board of Health v. West Riding and Grimsby Railway Co.*, L. R. 1 Q. B. 84; 35 L. J. (M. C.) 69; 14 W. R. 100; 13 L. T. N. S. 590; *Grand Junction Canal Co. v. Dimes*, 2 M. N. & G. 285; *Reg. v. Rand*, L. R. 1 Q. B. 230; 35 L. J. (M. C.) 147.)

(e) By s. 14 of 2 & 3 Vict. c. 71, it is enacted, that any one of the "Two Justices."

8 & 9 Vict. c. 20.

One metropolitan police magistrate has the same power as two justices.

"Company" under the Railway Companies Act, 1867, (30 & 31 Vict. c. 127.)

Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119.)

Right of owner of private railway to take tolls.

"Railway."

Stations.

Short title of the act.

Form in which portions of this act may be incorporated in other acts.

metropolitan police magistrates may do alone any act, at a metropolitan police-court, which by any law in force, or by any law not containing any express enactment to the contrary, thereafter to be enacted, was or should be enacted to be done by more than one justice.

(f) The Railway Companies Act, 1867, (30 & 31 Vict. c. 127.) by s. 3 is restricted to railway companies, that is to say, companies "constituted by act of Parliament, or by certificate under act of Parliament, for the purpose of constructing, maintaining, or working a railway, (either alone or in conjunction with any other purpose.)"

The term "company," as used in the Regulation of Railways Act, 1868, (31 & 32 Vict. c. 119.) means a company incorporated either before or after the passing of that act, for the purpose of constructing, maintaining, or working a railway in the United Kingdom, (either alone or in conjunction with any other purpose,) and includes, except when otherwise expressed, any individual or individuals not incorporated, who are owners or lessees of a railway in the United Kingdom, or parties to an agreement for working a railway in the United Kingdom.

As to the right of an owner of a private railway to use it for the purpose of carrying passengers and goods, and taking tolls as a common railway carrier, see *Hughes v. Chester and Holyhead Railway Co.*, 1 Dr. & Sm. 524; 3 De G. F. & J. 352; 31 L. J. (Ch.) 97; 10 W. R. 219.

(g) By the Regulation of Railways Act, 1868, (31 & 32 Vict. c. 119.) the word "railway" means the whole or any portion of a railway or tramway, whether worked by steam or otherwise, (s. 2.)

The description of the word "railway," as meaning the railway and works by the special act authorised to be constructed, is to be taken as implying an authority to make all those works which shall be necessary for the purposes of traffic within s. 16, and a station is clearly one of them: (*Cotter v. North Staffordshire Railway Co.*, 2 Ph. 469; 5 R. C. 187.)

But although stations may form part of the "railway," still it is doubtful whether they do so for all purposes, *e. g.*, to enable parties having the right to run trains on the line, to have also the use of the stations. See *Midland Railway Co. v. Ambergate Railway Co.*, 10 Hare, 359; and s. 92, *post*.

IV. And be it enacted, That in citing this act in other acts of Parliament, and in legal instruments, it shall be sufficient to use the expression, "The Railways Clauses Consolidation Act, 1845."

V. And whereas it may be convenient, in some cases, to incorporate with acts hereafter to be passed, some portion only of the provisions of this act; be it therefore enacted, That, for the purpose of making any such incorporation, it shall be sufficient in any such act to enact that the clauses of this act with respect to the matter so proposed to be

incorporated, (describing such matter as it is described in S & 9 Vict. c. 20. this act, in the words introductory to the enactment with respect to such matter,) shall be incorporated with such act, and thereupon all the clauses and provisions of this act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such act, form part of such act, and such act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such act shall relate.

CONSTRUCTION OF RAILWAY.

And with respect to the construction of the railway and the works connected therewith, be it enacted as follows:—

VI. In exercising the power given to the company by the special act to construct the railway (a), and to take lands (b) for that purpose, the company shall be subject to the provisions and restrictions contained in this act and in the said Lands Clauses Consolidation Act; and the company shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the railway, or injuriously affected by the construction thereof, full compensation (c) for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties, by reason of the exercise, as regards such lands, of the powers by this or the special act, or any act incorporated therewith, vested in the company; and, except where otherwise provided by this or the special act (d), the amount of such compensation shall be ascertained and determined in the manner provided by the said Lands Clauses Consolidation Act for determining questions of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the said last-mentioned act shall be applicable to determining the amount of any such compensation, and to enforcing the payment or other satisfaction thereof.

(a) Where the language of the special act authorising the construction of a railway is merely permissive, as that "it shall be lawful" for the company to construct the railway, it is now settled, (though a different opinion at one time prevailed,) that there is no obligation on the company to make the railway, or even to complete it after they have constructed one portion of it: (*York, &c.*, Where language of special act is permissive only.

320 *Railways Clauses Consolidation Act, 1845, s. 6.*

§ 9 VICT. C. 20.	<i>Railway Co., v. Reg.</i> , 1 El. & Bl. 858; 7 R. C. 459; 22 L. J. (Q. B.) 225; <i>Edinburgh, &c., Railway Co., v. Phillips</i> , 2 M.Q. H. L. 524; <i>Scottish North-Eastern Railway Co. v. Stewart</i> , 3 M.Q. H. L. 382; <i>Great Western Railway Co. v. Reg.</i> , 1 El. & Bl. 874.)
Where language is imperative.	If, however, the language of the special act be imperative, the company may be compelled by mandamus to execute the work: (<i>R. v. Severn and Wye Railway Co.</i> , 2 B. & Ald. 646; <i>Great Western Railway Co. v. Reg.</i> , 1 El. & Bl. 874.) The mandamus may be obtained by a landowner whose lands are required for the purposes of the railway: (<i>Ibid.</i> ;) and a mandamus appears to be the proper remedy in such a case: (See <i>Leominster Canal Navigation v. Shrewsbury, &c., Railway Co.</i> , 3 K. & J. 654; 26 L. J. (Ch.) 764.)
Mandamus.	
Other remedies.	Where, however, there is a neglect of a statutory provision by a company, any person who suffers a special injury thereby may maintain an action against them for the injury suffered. Thus an ironmaster was held entitled to recover damages for an injury sustained by the neglect of a company to convert a tramway in his neighbourhood into a railway: (<i>Booth v. Monmouthshire Railway, &c., Co.</i> , 17 L. T. 154; see also <i>Chamberlaine v. Chester, &c., Railway Co.</i> , 1 Exch. 870.) There is also a remedy by indictment for breaches of statutory obligation: (<i>R. v. Birmingham, &c., Railway Co.</i> , 3 Q. B. 223; 3 R. C. 148; <i>R. v. Great North of England Railway Co.</i> , 9 Q. B. 315.)
Action for damages.	
Indictment.	
Sufficiency of returns to mandamus to construct.	It is a sufficient return to such a mandamus as is referred to above, that the time for the exercise of the company's compulsory powers of purchase has expired: (<i>Reg. v. London and North-Western Railway Co.</i> , 16 Q. B. 864; 20 L. J. (Q. B.) 399;) unless after the issue of the writ there was time to give the necessary notices before the expiration of the period for the compulsory taking of the land: (<i>Reg. v. York, &c., Railway Co.</i> , 16 Q. B. 886; 20 L. J. (Q. B.) 503.)
Capital not subscribed.	The impossibility of getting the capital subscribed for, as required by s. 16 of the Lands Clauses Act, 1845, <i>ante</i> , p. 155, has also been held a sufficient return to a mandamus to compel the making of a railway: (<i>R. v. Ambergate, &c., Railway Co.</i> , 1 El. & Bl. 372; 22 L. J. (Q. B.) 191.) But that the line of railway has become unnecessary, or will prove unremunerative, or the absence of any reasonable probability that sufficient funds can be raised, has been held an insufficient return: (<i>R. v. York, &c., Railway Co.</i> , 1 El. & Bl. 178; 22 L. J. (Q. B.) 41. See <i>Reg. v. Eastern Counties Railway Co.</i> , 10 A. & El. 531; 1 R. C. 509.)
Line become unnecessary.	
Information by Attorney-General.	It seems that the non-completion of the railway is not a matter of public injury for which an information by the Attorney-General will lie: (<i>Attorney-General v. Birmingham Railway Co.</i> , 3 M.N. & G. 453.)
Company are judges of what lands are to be taken.	And it has been decided that the Court of Chancery will not interfere to prevent a declaration of a dividend on the ground that the railway is not open. (See <i>Browne v. Monmouthshire Railway Co.</i> , 13 Bea. 32; and the notes to s. 120 of the Companies Clauses Act, 1845, <i>ante</i> , p. 108.) (b) The company are the judges of the lands they will take, but they must use their discretion <i>bona fide</i> , and not for collateral purposes: (<i>Stockton and Darlington Railway Co. v. Brown</i> , 9 H. L. 246.)

but they may not take land for the purpose of making an accommodation road, in order to avoid paying compensation to a neighbouring landowner, whose property was injuriously affected by the proximity of the line: (*Dodd v. Salisbury and Yeovil Railway Co.*, 11 F. 158.)

Must not use powers for collateral purposes.

Also, a company is not permitted to take land for the mere purpose of getting materials for the construction of their line: (*Atinck v. Norfolk Estuary Co.*, 8 D. G. M. & G. 714; and see *W. v. Manchester and Leeds Railway Co.*, 4 My. & Cr. 116; 1 R. 76; and *Flower v. London, Brighton, and South Coast Railway Co.*, 5 N. R. 424; although the land so taken be within the limits of deviation: (*Everfield v. Mid-Sussex Railway Co.*, 1 Giff. 153; G. & J. 286.)

Or for getting materials for line.

When power had been given to two railway companies to take the same piece of land, over which the plaintiffs had already constructed their railway, the defendants were restrained from crossing the line until the question as to the conflicting powers had been decided at law: (*Manchester, Sheffield, and Lincolnshire Railway Co. v. Great Northern Railway Co.*, 9 Hare, 284.)

Even though the land be within limits of deviation.

Conflicting powers to take same land.

Anything is to be made a matter of agreement between the railway company and the landowner as to the works to be executed, could be done before the works are commenced: (*Gray v. Liverpool and Bury Railway Co.*, 9 Bea. 391; 4 R. C. 235.)

Agreements as to works.

As to such agreements, and the extent to which they may limit the operation of railway acts, see notes to ss. 16 and 68, *post*.

Compensation under s. 68 of the Lands Clauses Act, 1845, is not to have been actually assessed before the commencement of the works by the company: (*Hutton v. London and South-Western Railway Co.*, 7 Hare, 259; 18 L. J. (Ch.) 345.)

Compensation under s. 68 of Lands Clauses Act.

An important question has arisen on the construction of this section,—whether the owner of a house, none of whose lands have been taken for the purposes of the railway, is entitled to recover, not at the company who constructed it, compensation for the injury to his house (not structural, but still depreciating its value) caused by vibration, smoke, and noise, in running locomotives with wheels in the ordinary way, after the construction of the railway. The Court of Queen's Bench (consisting of Mellor and Lush, J.J.)

held that the owner could not recover compensation for such injury. But this decision was reversed by the Court of Exchequer Chamber, consisting of Bramwell, B., Keating and Smith, J.J.; *dissenting*, Channell, B.: (*Brand v. Hammersmith and City Railway Co.*, 2 L. R. (Q. B.) 223.) In this case the railway had never since its opening for traffic been worked by the defendants, (who were liable to make compensation,) but by another railway company. See the notes to s. 68 of the Lands Clauses Act, 1845, for further information as to damage and compensation, *ante*, p. 192, *et seq.*; the notes to s. 16, *post*, as to the mode of constructing the works by the company.

* The distinction is now clearly established between damage to works authorised by statute, (where the party generally is not liable to compensation, and the authority is a bar to the action,) and damage by reason of the work being negligently done, as to which the owner's remedy by action remains: (*Per Crompton, J.*,

Damage from works authorised, and damage from negligence.

8 & 9 VICT. c. 20. *Brine v. Great Western Railway Co.*, 31 L. J. (Q. B.) 101; see *Lawrence v. Great Northern Railway Co.*, 16 Q. B. 643; *Clothier v. Webster*, 31 L. J. (C. P.) 316; *Chamberlaine v. Chester, &c., Railway Co.*, 1 Exch. 870.) See the notes to s. 16, *post*.

Duty of company to employ best method of construction of works.

If a company, in the construction of a bridge over their line, employ a person who is fully competent to do the work, and the best method is adopted, and the best materials are used, they will not be responsible for injuries sustained by the falling of the bridge on a passenger; but if they fail in any of these respects, they will be liable: (*Grote v. Chester and Holyhead Railway Co.*, 2 Exch. 251.)

Negligence of workmen employed by contractor.

Where, however, a company employed a contractor to build a viaduct over a road, and some workmen employed by the contractor in the execution of the works forced a block of stone off the parapet, which killed a man, it was held that the company could not be made liable for the negligent act of the workmen: (*Reedie v. London and North-Western Railway Co.*, 4 Exch. 244; 20 L. J. (Ex.) 65; 6 R. C. 184.)

See further on this subject of negligence, notes to ss. 86, 88, 89, *post*.

Errors and omissions in plans to be corrected.

VII. If any omission, mis-statement, or erroneous description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands, described on the plans or books of reference (a) mentioned in the special act, or in the schedule to the special act, it shall be lawful for the company, after giving ten days' notice to the owners of the lands affected by such proposed correction, to apply to two justices for the correction thereof; and if it shall appear to such justices that such omission, mis-statement, or erroneous description arose from mistake, they shall certify the same accordingly, and they shall in such certificate (b) state the particulars of any such omission, and in what respect any such matter shall have been mis-stated or erroneously described; and such certificate shall be deposited with the clerks of the peace of the several counties in which the lands affected thereby shall be situate, and shall also be deposited with the parish clerks of the several parishes in *England*, and with the postmasters of the post towns in or nearest to such parishes in *Ireland*, in which the lands affected thereby shall be situate; and such certificate shall be kept by such clerks of the peace, parish clerks, and postmasters respectively, along with the other documents to which they relate; and thereupon such plan, book of reference, or schedule shall be deemed to be corrected according to such certificate; and it shall be lawful for the company to make the works in accordance with such certificate.

(a) The plans deposited under the standing orders are not to be regarded as binding upon the company, except so far as the representations they contain are afterwards incorporated in and made part of the act of Parliament: (*North British Railway Co. v. Tod*, 12 Cl. & Fin. 722; 4 R. C. 449; *Beardmer v. London and North-Western Railway Co.*, 1 M.N. & G. 112; 18 L. J. (Ch.) 432; *R. v. Caledonian Railway Co.*, 16 Q. B. 19; 20 L. J. (Q. B.) 147.) The plans determine only the *datum line*, and the line of railway measured with reference to it, *not* the surface levels: (*Ibid.* See also *Feoffees of Heriot's Hospital v. Gibson*, 2 Dow, 301; *Squire v. Campbell*, 1 My. & Cr. 459.) And an injunction cannot be obtained though the deposited plans are so incorrect as altogether to mislead the owner of the lands with reference to the manner in which his property would be affected by the railway works: (*North British Railway Co. v. Tod*, *ubi supra.*)

How far deposited plans are binding.

Plans settle datum line, not surface levels.

Incorrect plans.

Upon this principle a railway company was not restrained from making their railroad nearer to the plaintiff's lodge, and on another level than was shown upon the plan exhibited to him: (*North British Railway Co. v. Tod*, 12 Cl. & Fin. 722.)

Change of plan with regard to levels.

For similar reasons, the raising of a bridge over a street to a higher level than that appearing on the plans being proposed, an injunction was granted, the plans not being considered as necessary to be referred to in regard to collateral works to be constructed under s. 16 of the Railway Clauses Act: (*Beardmer v. London and North-Western Railway Co.*, 1 M.N. & G. 112; 1 H. & T. 161; 13 Jur. 327; 18 L. J. (Ch.) 432.)

Alterations with reference to works under s. 16.

The deposited plans and sections confer no authority to divert a road: (*Attorney-General v. Great Northern Railway Co.*, 4 De G. & S. 75.) "A memorandum of an intention to divert a road, however clearly it may be expressed in the deposited plans, does not amount to a parliamentary licence to divert or alter the road:" (*Per Blackburn, J., Reg. v. Wycombe Railway Co.*, 2 L. R. (Q. B.) 322; 36 L. J. (Q. B.) 121; 15 W. R. 489; 15 L. T. N. S. 610.) See notes to s. 16, *post*.

Deposited plans give no authority to divert a road.

Corrections of the plans are likewise unnecessary where deviations have become indispensable: (*Breynton v. London and North-Western Railway Co.*, 10 Bea. 238; 4 R. C. 553; 11 Jur. 28.)

Correction of plans.

But where a special act expressly provides that the works are to be made "in the lines and upon the lands" delineated on a plan, and describes the plan showing the lines, with a section showing the levels, it is a clear indication that the works are to be executed upon the lines and according to the levels which the promoters have themselves proposed in their deposited plans and sections: (*Ware v. Regent's Canal Co.*, 3 De G. & J. 212.)

Where plans specifically binding.

(b) As to the form of the justices' certificate, see *Taylor v. Clemenson*, 2 Q. B. 978; 11 Cl. & Fin. 610; 3 R. C. 65.

Form of certificate.

It seems that if the justices are satisfied that the omission, &c., arose from mistake, they are bound to certify, and may be compelled to do so by mandamus: (*Ex parte Central Wales Railway Co.*, (Q. B.) Mich. T. 1864, referred to in *Hodges on Railways*, p. 356, 4th edit.)

If omission by mistake, justices must certify.

The fact that certain intermediate lessees had received no notice of the proposed railway before the passing of the act, was held not to prevent the company from taking the land; nor was the case

Erroneous description in plans.

8 & 9 VICT. c. 20. considered within the operation of this section, the meaning of which was declared to be, that where there is such an erroneous description that the company cannot act on their general empowering clauses, because they cannot satisfy persons that the land in question was described in the plan and book of reference, they may go before a magistrate to get that state of things corrected: (*Comp. v. West End, &c., Railway Co.*, 1 K. & J. 681.)

Works not to be proceeded with until plans of all alterations authorised by Parliament have been deposited.

VIII. It shall not be lawful for the company to proceed in the execution of the railway unless they shall have previously to the commencement of such work deposited with the clerks of the peace of the several counties in or through which the railway is intended to pass a plan and section of all such alterations from the original plan and section as shall have been approved of by Parliament, on the same scale and containing the same particulars as the original plan and section of the railway, and shall also have deposited with the clerks of the several parishes in *England*, and the postmasters of the post-towns in or nearest to such parishes in *Ireland*, in or through which such alterations shall have been authorised to be made, copies or extracts of or from such plans and sections as shall relate to such parishes respectively.

See notes to preceding section.

Clerks of the peace, &c., to receive plans of alterations, and allow inspection.

7 Will. 4 & 1 Vict. c. 83.

IX. The said clerks of the peace, parish clerks, and postmasters shall receive the said plans and sections of alterations, and copies and extracts thereof respectively, and shall retain the same, as well as the said original plans and sections, and shall permit all persons interested to inspect any of the documents aforesaid, and to make copies and extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of the original plans and sections by an act passed in the first year of the reign of her present Majesty, intituled, "An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament."

See s. 16 of the Companies Clauses Act, and s. 150 of the *Land Clauses Act*, *ante*, and the notes thereto.

Copies of plans, &c., to be evidence.

X. True copies of the said plans and books of reference, or of any alteration or correction thereof, or extract there-

from, certified by any such clerk of the peace, which certificate such clerk of the peace shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

XI. In making the railway it shall not be lawful for the company to deviate from the levels of the railway, as referred to the common datum line (a) described in the section approved of by Parliament, and as marked on the same, to any extent exceeding in any place five feet, or, in passing through a town (b), village, street, or land continuously built upon, two feet, without the previous consent in writing of the owners or occupiers of the land in which such deviation is intended to be made; or in case any street or public highway shall be affected by such deviation, then the same shall not be made without the like consent of the trustees or commissioners having the control of such street or public highway, or, if there be no such trustees or commissioners, without the like consent of two or more justices of the peace in petty sessions assembled for that purpose, and acting for the district in which such street or public highway may be situated, or without the like consent of the commissioners for any public sewers, or the proprietors of any canal, navigation, gas-works, or water-works affected by such deviation: Provided always, that it shall be lawful for the company to deviate from the said levels to a further extent without such consent as aforesaid, by lowering solid embankments or viaducts, provided that the requisite height of headway as prescribed by act of Parliament be left for roads, streets, or canals passing under the same: Provided also, that notice of every petty sessions to be holden for the purpose of obtaining such consent of two justices as is hereinbefore required shall, fourteen days previous to the holding of such petty sessions, be given in some newspaper circulating in the county, and also be affixed upon the door of the parish church in which such deviation or alteration is intended to be made, or, if there be no church, some other place to which notices are usually affixed.

(a) According to this section it will be seen that the prescribed levels refer not to the surface levels, but to the datum line and the line of railway measured and ascertained with reference to its distance from the datum line: (*North British Railway Co. v. Tod*, 12 Cl.

Limiting deviation from datum line described on sections, &c.

Prescribed levels refer to datum line, and not to surface levels.

326 *Railways Clauses Consolidation Act, 1845, ss. 11, 12.*

s & 9 VICT. c. 20. & Fin. 722 : 5 Bell, 184 ; 4 R. C. 449 ; *Beardmer v. London and North-Western Railway Co.*, 1 M.N. & G. 112 ; 1 H. & T. 161 ; 18 L. J. (Ch.) 432 ; 13 Jur. 327.)

Deviations from surface levels. A landowner was, therefore, not allowed to interfere with a railway company, who, instead of adhering to their plans, which showed a bridge raising the level of a road only two feet, and a cutting fifteen feet deep, were about to make the cutting sixty-one feet nearer the plaintiff's house, and the bridge seventeen feet high : (*North British Railway Co. v. Tod*, 12 Cl. & Fin. 722 ; 5 Bell, 184 ; 4 R. C. 449.)

Raising level of road : Similarly, no injunction was granted to restrain the raising of a bridge over a street to a level higher than that appearing on the plans : (*Beardmer v. London and North-Western Railway Co.*, 1 M.N. & G. 112 ; 1 H. & T. 161 ; 18 L. J. (Ch.) 432 ; 13 Jur. 327.)

Of a bridge over a street. The extent to which the deposited plans and sections are binding on the company is shown by the cases cited under s. 7, *supra*, p. 323.

Binding force of plans and sections. If sections as well as plans be deposited, both will be held to be incorporated in the special act, and to allow a vertical as well as a lateral deviation to the works : (*Ware v. Regent's Canal Co.*, 3 De G. & J. 212 ; 23 Bea. 575 ; 28 L. J. (Ch.) 153.)

Lateral deviations where sections as well as plans are deposited. If the special act prescribes a time within which any deviations may be made, the railway company are bound to make them within the prescribed period.

Prescribed time for deviations. But if a railway act allows a space of two years for making deviations, and none are made until after that time, but an extension act gives another year for the construction of the railway, it seems that the company would have an additional year for making deviations : (*River Dun Navigation Co. v. North Midland Railway Co.*, 1 R. C. 135.) See also s. 123 of the Lands Clauses Act, 1845, *ante*, p. 288.

Extension of time by subsequent act. Excessive lateral deviation was not restrained by injunction where it appeared that the plaintiff was cognisant of the intended deviation, and acquiesced in it : (*Hopkins v. Great Northern Railway Co.*, 11 L. T. 306.)

Acquiescence in cases of excessive deviation. (b) The word "town" in this section, as interpreted by the Court of Exchequer, (*Elliot v. South Devon Railway Co.*, 2 Exch. 725 ; 5 R. C. 500,) means a collection of inhabited houses so near to each other that they may reasonably be said to be continuous ; and the term, according to the same authority, will include a space of open ground surrounded by continuous houses, and seemingly all open spaces occupied as mere accessories to such houses, although not so surrounded. (See also *Reg. v. Cottle*, 16 Q. B. 412, and *ante*, p. 295.) In the former case, (which was the trial of an issue whether a railway was passing through a "town" within the meaning of this section,) it was held a misdirection on the part of the judge to have merely told the jury that the word "town" was to be understood in its ordinary and popular sense, instead of giving such a definition as would have guided them in deciding the particular issue before them.

Meaning of word "town." XII. Before it shall be lawful for the company to make any greater deviation from the level than five feet, or, in

Public notice to be given previous to making greater deviations.

town, village, street, or land continuously built upon, 8 & 9 Vict. c. 20.
feet, after having obtained such consent as aforesaid,
shall be incumbent on the company to give notice of
intended deviation by public advertisement, inserted
at least in two newspapers, or twice at least in one
paper, circulating in the district or neighbourhood
where such deviation is intended to be made, three weeks
before commencing to make such deviation; and
shall be lawful for the owner of any lands prejudicially
affected (a) thereby, at any time before the commencement
of the making of such deviation, to apply to the Board of
Trade, after giving ten days' notice to the company, to
decide whether, having regard to the interests of such
landowners, such proposed deviation is proper to be made;
and it shall be lawful for the Board of Trade, if they think
proper, to decide such question accordingly, and by their cer-
tificate in writing either to disallow the making of such
deviation or to authorise the making thereof, either simply
or with any such modification as shall seem proper to the
Board of Trade; and after any such certificate shall have
been given by the Board of Trade it shall not be lawful
for the company to make such deviation, except in con-
formity with such certificate.

Power to the
owners of ad-
joining lands to
appeal to the
Board of Trade
against such
deviations.

It does not seem to be necessary that it should be proved that
lands are, or are likely to be, prejudicially affected in order to
enable a landowner to notice under this section. See *Pearce v.
London and North Western Railway Co.*, 1 Drew. 244; 7 R. C. 902, which case was,
however, sent for the arbitration of the Board of Trade. For form
of notice allowing the reference, see 1 Drew. 246.
As to the effect of acquiescence on the part of a landowner, see *Acquiescence.
Hins v. Great Northern Railway Co.*, 11 L. T. 306.

III. Where in any place it is intended to carry the Arches, tunnels
&c., to be made
as marked on
deposited plans.
way on an arch or arches or other viaduct, as marked
on the said plan or section, the same shall be made accord-
ingly; and where a tunnel is marked on the said plan or
section as intended to be made at any place, the same shall
be made accordingly, unless the owners, lessees, and occu-
piers of the land in which such tunnel is intended to be
made shall consent that the same shall not be so made (a).

Previously to the passing of the Railways Clauses Act, 1863,
there could be no deviations where viaducts or tunnels were
constructed unless the owners, &c., consented, it having been
held in *Little v. Newport, &c., Railway Co.*, 12 C. B. 752; 22 L. J.
(39) that the power of deviation given by s. 15 of this act,

s. 8 & 9 VICT. c. 20. *post*, p. 330, in ordinary cases did not arise where viaducts or tunnels were to be made. The present section allowed a tunnel to be dispensed with by consent, but not a viaduct.

Deviations under the Railways Clauses Act, 1863, (26 & 27 Vict. c. 92.) It is enacted that, notwithstanding anything in the Railways Clauses Acts, 1845, respectively contained, the company, in the construction of the railway, may deviate from the line or level of any arch, tunnel, or viaduct described on the deposited plans or sections, so as the deviation be made within the limits of deviation shown on those plans, and subject to the limitations contained in ss. 11, 12, and 15 of those acts respectively, and so as the nature of the work described be not altered; and may also substitute any engineering work not shown on the deposited plans or sections for an arch, tunnel, or viaduct, as shown thereon; provided that every such substitution be authorised by a certificate of the Board of Trade; and the Board of Trade may grant such certificate in case it appears to them, on due inquiry, that the company has acted in the matter with good faith; and that the owners, lessees, and occupiers of the lands in which the substitution is intended to be made consent thereto, and also that the safety and convenience of the public will not be diminished thereby; provided that nothing in the present section shall affect any power given to the company or to the Board of Trade by ss. 11, 12, 14, and 15 of the last-mentioned acts respectively. See the act, *post*.

Substitution of works not in plans, with consent of Board of Trade.

Consent of land-owners.

Agreement to construct works contrary to act.

Plans to be strictly followed where the Railways Clauses Act is incorporated in special act.

Alteration of bridges where authorised deviation makes it unavoidable.

Prescribed gradient cannot be changed.

It would seem that an agreement with a landowner to construct works in a way different from that authorised by the act, would not bind the company: (*Breynton v. London and North-Western Railway Co.*, 10 Bea. 238.)

Under this section the span of a bridge, marked on the plan as of forty-five feet, was not allowed to be reduced to thirty-five feet, the effect of the incorporation of the Railways Clauses Act being to take the case out of the rule laid down in *North British Railway Co. v. Tod*, (12 Cl. & Fin. 722; 5 Bell, 184; 4 R. C. 449,) and other cases, in which it was held* that the deposited plans and sections are not to be regarded as binding, except so far as the representation they contain is incorporated in and made part of the act of Parliament: (*Attorney-General v. Tewkesbury and Malvern Railway Co.*, 4 Giff. 333; 1 De G. J. & Sm. 423; 32 L. J. (Ch.) 482; 8 L. T. N. S. 196.)

But where the special act did not restrict a deviation to such an extent that the level of a bridge must, in consequence of such deviation, be raised, an information, not alleging wanton or capricious exercise of the powers vested in the railway company, was dismissed: (*Attorney-General v. Great Western Railway Co.*, 1 W. N. 131; 14 W. R. 726.)

Where, however, the special act contained a proviso, that the approach to a certain bridge should not have a less gradient than one in thirty, the Lords Justices, upon an information filed at the relation of a Board of Health, held that the railway company must be kept to their bargain, which was embodied in the act of Parliament, and that though the company, by keeping to the prescribed gradient, would have to pass over land which they had no power to take,

* See *supra*, p. 323.

they could not be allowed to reduce the gradient to one in twenty: 8 & 9 VICT. c. 29. (*Attorney-General v. Mid-Kent Railway Co.*, 2 W. N. 263.)

It is not competent for a company, having power to construct an aqueduct through a tunnel, afterwards, in pursuance of the same powers, to acquire land on the surface for the erection of buildings forming part of their works: (*Simpson v. South Staffordshire Water-Works Co.*, 6 N. R. 184; 34 L. J. (Ch.) 380; 13 W. R. 729; 12 L. T. N. S. 360.)

XIV. It shall not be lawful for the company to deviate from or alter the gradients, curves, tunnels, or other engineering works (a) described in the said plan or section, except within the following limits, and under the following conditions; (that is to say,)

Limiting deviations from gradients, curves, &c.

Subject to the above provisions in regard to altering levels, it shall be lawful for the company to diminish the inclination or gradients of the railway to any extent, and to increase the said inclination or gradients as follows; (that is to say,) in gradients of an inclination not exceeding one in a hundred, to any extent not exceeding ten feet *per* mile, or to any further extent which shall be certified by the Board of Trade to be consistent with the public safety, and not prejudicial to the public interest; and in gradients of or exceeding the inclination of one in a hundred, to any extent not exceeding three feet *per* mile, or to any further extent which shall be so certified by the Board of Trade as aforesaid:

It shall be lawful for the company to diminish the radius of any curve described in the said plan to any extent which shall leave a radius of not less than half a mile, or to any further extent authorised by such certificate as aforesaid from the Board of Trade:

It shall be lawful for the company to make a tunnel, not marked on the said plan or section, instead of a cutting, or a viaduct instead of a solid embankment, if authorised by such certificate as aforesaid from the Board of Trade.

(a) The construction of a bridge is one of the "engineering works" referred to in this section; and it must therefore be made according to the deposited plan: (*Attorney-General v. Tewkesbury and Malvern Railway Co.*, 4 Giff. 333; 1 De G. J. & Sm. 423; 32 L. J. (Ch.) 482; 8 L. T. N. S. 196. And see *Reg. v. Caledonian Railway Co.*, 16 Q. B. 19.)

A bridge is an "engineering work."

It is now, however, competent for any railway company incorporated by a special act passed since the Railway Clauses Act, 1863,

"Engineering work" under the Railway Clauses Act, 1863.

8 & 9 VICT. c. 20. (26 & 27 VICT. c. 92,) to deviate from the line or level of any arch, tunnel, or viaduct described on the deposited plans or sections, so as the deviation be made within the limits of deviation shown on those plans, and subject to the limitations contained in ss. 11, 12, and 13 of the Railways Clauses Acts, 1845, respectively, and so as the nature of the works described be not altered; and also to substitute any engineering work not shown on the deposited plans or sections, for an arch, tunnel, or viaduct, as shown thereon, and authorised by the Board of Trade, who may grant a certificate in case it appears to them, on inquiry, that the company have acted in good faith, and that the owners, lessees, and occupiers of the lands in which the substitution is intended to be made consent thereto, and also that the safety of the public is not diminished thereby. Nothing in this section is to affect any power given to the company, or to the Board of Trade, by ss. 11, 12, or 15 of the act of 1845. See the act, *post*.

Unavoidable
change of gra-
dients.

In a case not coming within the Railways Clauses Act, 1863, where the company had made a lateral deviation within their powers, but such deviation compelled them to raise the level of a bridge, no injunction was granted on an information seeking to restrain the construction of the bridge in the way proposed, no wanton or capricious exercise of the powers vested in the company having been proved, and evidence being adduced that the line and the gradients would be improved by the course objected to: (*Attorney-General v. Great Western Railway Co.*, 1 W. N. 131; 14 W. R. 726.)

To what works
this section ap-
plies.

This section does not apply to mere collateral works, such as cross-roads or bridges for carrying them over the line, but to the works on the line of the railway itself: (*Attorney-General v. Teakelbury and Malvern Railway Co.*, 4 Giff. 333; 1 De G. J. & Sm. 423; 32 L. J. (Ch.) 482.)

Lateral devia-
tions.

XV. It shall be lawful for the company to deviate from the line delineated on the plans so deposited, provided that no such deviation shall extend to a greater distance than the limits of deviation delineated upon the said plans (*a*), nor to a greater extent in passing through a town, village, or lands continuously built upon than ten yards, or elsewhere to a greater extent than one hundred yards from the said line, and that the railway by means of such deviation be not made to extend into the lands (*b*) of any person, whether owner, lessee, or occupier, whose name is not mentioned in the books of reference, without the previous consent in writing of such person, unless the name of such person shall have been omitted by mistake, and the fact that such omission proceeded from mistake shall have been certified in manner herein or in the special act provided for in cases of unintentional errors in the said books of reference.

(a) The deviation here referred to applies to the line of the railway actually laid down shall not deviate more than one hundred yards from the line laid down, and delineated in the parliamentary plans, the *medium filum viæ* of each being the commencement and termination in measuring those one hundred yards: (*Doe d. Armitstead v. North Staffordshire Railway Co.*, 16 Q. B. 526; 20 L. J. (Q. B.) 249.) The company are not prohibited by this section from taking (by consent) for collateral purposes, such as slopes and embankments, land beyond the limits of deviation here laid down for the line itself, if such land be scheduled in the company's act, and included in their plans and books of reference: (*Ibid.*, *Doe d. Payne v. Bristol, &c., Railway Co.*, 6 M. & W. 320; 2 R. C. 75.)

Line of railway laid down in plan is line to which deviation referred.

(b) The mere affidavit of an engineer that it is necessary for the company to take land within the limits of deviation, is not sufficient to warrant an exercise of their power: (*Flower v. London, Brighton, and South Coast Railway Co.*, 5 N. R. 424.)

Evidence of necessity for deviation.

A railway company was not allowed to proceed upon a notice to treat, comprising some land, part of a field, a portion of which was within, and a portion without the limits of deviation, as marked on the deposited plans: (*Wrigley v. Lancashire and Yorkshire Railway Co.*, 4 Giff. 352; 9 Jur. N. S. 710.)

Notice to treat for lands without the limits of deviation.

A plaintiff may, by knowledge and acquiescence, lose his right to relief in respect of excessive lateral deviation: (*Hopkins v. Great Northern Railway Co.*, 11 L. T. 306.)

Acquiescence.

XVI. Subject to the provisions and restrictions in this and the special act (a), and any act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway (b), or the accommodation works connected therewith, hereinafter mentioned, to execute any of the following works; (that is to say,)

Works to be executed.

They may make or construct, in, upon, across, under, or over any lands, or any streets, hills, valleys, roads, railroads, or tramroads, rivers, canals, brooks, streams, or other waters, within the lands described in the said plans or mentioned in the said books of reference or any correction thereof, such temporary or permanent inclined planes, tunnels (c), embankments, aqueducts, bridges (d), roads (e), ways, passages, conduits, drains, piers, arches, cuttings, and fences as they think proper;

Inclined planes, &c.

They may alter the course of any rivers not navigable, brooks, streams, or watercourses, and of any branches of navigable rivers, such branches not being themselves navigable, within such lands, for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under the same, and

Alteration of course of rivers, &c.

S. & 9 VICT. C. 20

	divert or alter, as well temporarily as permanently, the course of any such rivers, or streams of water (<i>f</i>), roads (<i>g</i>), streets, or ways, or raise or sink the level of any such rivers or streams, roads, streets, or ways, in order the more conveniently to carry the same over or under or by the side of the railway, as they may think proper;
Drains, &c.	They may make drains or conduits into, through, or under any lands adjoining the railway, for the purpose of conveying water from or to the railway;
Warehouses, &c.	They may erect and construct such houses, warehouses, offices, and other buildings, yards, stations (<i>h</i>), wharfs, engines, machinery (<i>i</i>), apparatus, and other works and conveniences as they think proper;
Alterations and repairs.	They may from time to time alter, repair, or discontinue the before-mentioned works or any of them, and substitute others in their stead; and
General power.	They may do all other acts necessary (<i>j</i>) for making, maintaining, altering, or repairing, and using the railway:
Proviso as to damages.	Provided always, that in the exercise of the powers by this or the special act granted the company shall do as little damage as can be, and shall make full satisfaction in manner herein and in the special act, and any act incorporated therewith, provided, to all parties interested, for all damage by them sustained by reason of the exercise of such powers (<i>k</i>).

Contracts with landowners as to works to be executed.

(a) Notwithstanding these words, there is nothing to prevent a railway company from entering into a valid contract with a landowner concerning the construction of works, and the fact that the act of Parliament gives power to proceed in a specified manner does not supersede the jurisdiction of the Court of Chancery, to decree the specific performance of such a contract: (*Sanderson v. Cockermouth Railway Co.*, 7 R. C. 613.) See further as to contracts for the execution of accommodation works, s. 68, *post*.

Contracts by promoters.

As to the binding nature of contracts between landowners and promoters of railway companies, see *ante*, p. 147.

Contracts by directors.

And as to the power of directors to enter into contracts, and the mode of executing them, see *ante*, p. 83, *et seq.*

Conditional assent to passing of bill is binding on company as to the conditions stipulated for.

If, upon the faith of an agreement that a landowner shall withdraw his opposition to a bill on condition of the insertion into it of certain clauses for his benefit, he performs his share of the contract by allowing the bill to pass, the company will not afterwards be allowed to exercise their powers in contravention of the contract, although the stipulated clauses are not included in the act: (*Edwards v. Grand Junction Railway Co.*, 1 My. & Cr. 650; 1 R. C. 173.)

a mere qualified assent by certain road trustees, on condition 8 & 9 Vict. c. 20. the railway should pass over their road at a sufficient elevation, at the road itself should not be lowered, was held not to be the railway company, whose act passed without any mention of the plaintiffs' road, from exercising the general power under act of altering, crossing, &c., roads (*Aldred v. North Midland Railway Co.*, 1 R. C. 404.)

But not a mere qualified assent.

will landowners, who do not engage to withdraw their opposition to the bill, but who procure certain clauses to be inserted into their own benefit, be entitled to prevent the company doing acts but those which are expressly prohibited by their act, being no parliamentary contract between the parties in the case: (*Eton College v. Great Western Railway Co.*, 1 R. C.

Landowners not entitled to anything not in act, if they have not withdrawn opposition.

powers given by s. 16 are not necessarily abrogated by the effect of a contract regulating the construction of certain works: where a landowner agreed to withdraw his opposition, and to go to arbitration a question as to the approaches from a certain road which it was intended to divert, the company were allowed to divert the road to a greater degree (but within the limits of deviation) than was defined by the award, any injury thereby being a subject for compensation: (*Wood v. North Devonshire Railway Co.*, 1 M.N. & G. 278.)

Effect of contract as limiting operation of s. 16.

though clauses inserted into the act, on condition of withdrawal of opposition, bind the company, as in a case where it is stated that the railway should not be made nearer to the defendant's mill than a certain point, a question of law may arise, the Court of Chancery would direct a trial: (*Gray v. Liverpool & Manchester Railway Co.*, 4 R. C. 235.)

Where opposition withdrawn, but legal right to works doubtful.

it appears from this case, that where the mode of construction of the railway is made by the act a matter of agreement between the company and the landowner, such agreement must be come to before the works can be commenced.

Agreement should be made before works commenced.

seems that a contract by a railway company to execute works in a manner not authorised by their act would not bind the company: in other words, the company cannot contract themselves out of their powers: (*Breynton v. London and North-Western Railway Co.*, 1 Bea. 238; 4 R. C. 553; 11 Jur. 28.)

Company cannot contract itself out of its powers.

if a railway company make a contract with a landowner with reference to works to be executed by them, the Railways Clauses Act should be expressly referred to in such contract, if the company intend to claim the benefit of its provisions: (*Clarke v. Manchester, Sheffield, and Lincolnshire Railway Co.*, 1 J. & H. 631. See s. 49,

Railways Clauses Act should be incorporated in agreements as to works.

A company empowered by statute to construct "a railway and other works" may construct any of the works mentioned in this section after the line has been opened, although such works be not necessary, but only convenient: (*Sadd v. Maldon, &c., Railway Co.*, 1 J. 143; 6 R. C. 779.)

Power to construct works.

In respect to the obligation of the company to take by way of easement all lands upon or over which they intend to construct the railway, it seems that they cannot acquire a mere easement in, or right of use of, any lands; and that if they arch over any property,

Easements.

If land arched over, it must be taken.

8 & 9 VICT. c. 20. they must acquire the whole interest in it; see *per L. C. in Pinchin v. London and Blackwall Railway Co.*, 5 De G. M. & G. 851; and similarly, if they make a permanent tunnel under land, they must purchase the surface: (*Ramsden v. Manchester, South Junction, and Altringham Railway Co.*, 1 Exch. 723.)

Secur., where junctions are to be made. Several decisions, however, show that, for the purpose of making junctions, the company making a junction is required to procure an easement only over the land of the other company interfered with by such works; see *Manchester, Sheffield, and Lincolnshire Railway Co. v. Great Northern Railway Co.*, 9 Hare, 284; *Great Northern Railway Co. v. East and West India Docks and Railway Co.*, 7 R. C. 356; and ss. 10 and 11 of the Railways Clauses Act, 1863, (26 & 27 Vict. c. 92.) *post.*

Even where compulsory powers expired. And it has been further determined that an easement may thus be acquired although the compulsory powers of the company making the junction have expired: (*Great Northern Railway Co. v. East and West India Docks and Railway Co.*, 7 R. C. 356.)

Tunnel. (c) It is not competent for a railway company, after having given notice that they intend to carry their line over a landowner's property, to alter their plan by making a tunnel under it: (*Sparrow v. Oxford, Worcester, and Wolverhampton Railway Co.*, 2 De G. M. & G. 94; 7 R. C. 92.)

Surface to be taken. It seems to be settled that a railway company are bound, in case they intend to make a permanent tunnel, to acquire the surface of the land: (see *Pinchin v. London and Blackwall Railway Co.*, 5 De G. M. & G. 851; *Ramsden v. Manchester, South Junction, and Altringham Railway Co.*, 1 Exch. 723.)

Damage from construction of tunnels in towns. Where a railway company has power to make a tunnel, passing under and near houses in a town, and it is obvious that some damage must necessarily be done, but the tunnel has been completed without any serious injury being caused, the Court of Chancery will not grant an interlocutory injunction to restrain the company from using a particular mode of support for adjoining houses, although it will allow further evidence on the subject to be adduced at the hearing: (*Freehold General Investment Co. v. Metropolitan Railway Co.*, 1 W. N. 66; 14 L. T. N. S. 96.)

See ss. 13 and 14, and the notes thereto, *ante*, pp. 327-330.

As to the construction of bridges, see ss. 46-67, and notes thereto, *post.*

Bridge—"an engineering work" under s. 13. (d) It has been decided that a bridge is an "engineering work" within the meaning of the 13th section of the Railways Clauses Act, and it must, therefore, be made strictly according to the deposited plans and sections: (*Attorney-General v. Tewkesbury and Malvern Railway Co.*, 1 De G. J. & Sm. 423.)

Temporary bridges for carrying materials may be made; That a company may construct a temporary bridge for the purpose of carrying over materials, notwithstanding subsequent clauses in the act restricting their powers of making permanent bridges, so as to obstruct the navigation of a canal, is shown by the case of *London and Birmingham Railway Co. v. Grand Junction Canal Co.*, 1 R. C. 224.

Or for aiding in making a permanent bridge. So also it was held that a section of an act containing almost identical restrictions and powers with those of s. 16 did not prevent the erection of a temporary bridge, intended to aid in the construction of a permanent bridge, the construction of which was authorised

by the act: (*Priestley v. Manchester and Leeds Railway Co.*, 4 Y. & S. 9 VICT. c. 20. C. 72; 2 R. C. 134.)

But if the Railway Act specifies the width of the span and width of any bridge to be made, even a temporary bridge must comply with such a provision: (*Attorney-General v. Eastern Counties Railway Co.*, 3 R. C. 337.)

In some cases in which questions have arisen which it was difficult for the Court to determine without scientific assistance, such assistance has been called for before any order was made.

This was done in a case where a bridge was about to be built only six feet in height above the surface of the water, the plaintiff complaining of the injury he would suffer in consequence of his barges not being able to pass, and the engineer of the company stating that if the bridge were made otherwise, the embankments beyond the bridge would be too heavy, and might sink: (*Manser v. Northern and Eastern Counties Railway Co.*, 2 R. C. 380; see *Webb v. Manchester and Leeds Railway Co.*, 1 R. C. 426; *Coats v. Clarence Railway Co.*, 1 R. & M. 181.)

So, although the Court would not allow a bridge to pass at right angles to the line so as to divert a certain road, where the plans showed that a skew bridge should have been made, a competent person was directed to say what diversion was necessary in the interest of the company and the public: (*Attorney-General v. Dorset Central Railway Co.*, 3 L. T. N. S. 608.)

We have already seen that a company is bound by contracts with landowners as to works to be executed, and that unless the contract refers to the Railways Clauses Act the company cannot claim the benefit of it. See *ante*, p. 333.

A railway company were thus not allowed to make a bridge over a street less than forty-two feet wide, as in their contract with the landowner, notwithstanding the width prescribed by the 49th section was only twenty-five feet: (*Clarke v. Manchester, Sheffield, and Lincolnshire Railway Co.*, 1 J. & H. 631.)

With respect to the narrowing of roadways by the construction of bridges over them:—subject to the restrictions contained in s. 49, (post,) a bridge over a roadway may be made as the company may judge most advisable—e.g., by the erection of piers fixed in the road crossed over: (*Attorney-General v. London and Southampton Railway Co.*, 9 Sim. 78; 1 R. C. 302.)

If the company do not inflict substantial damage by prosecuting their work in an unauthorised manner in this respect, as, if they erect piers in the road for the purpose of widening their bridge under their powers, and thereby darken the passage of the archway, the Court of Chancery will not grant an injunction: (*Wandsworth Board of Works v. London and South-Western Railway Co.*, 31 L. J. (Ch.) 854.)

But if the injury from the erection of the piers be not clear, the Court may defer its decision until that question has been tried at law, putting the company upon terms to pull down the piers, or do such other acts as the Court may, after the verdict, direct: (*Attorney-General v. Manchester and Leeds Railway Co.*, 1 R. C. 436.)

A restriction as to the gradient of the approaches to a bridge, that it shall not be greater than the "present elevation," was con-

Width of such bridges.

Scientific assistance called in by Court of Chancery.

As to proper height of a bridge over a stream.

As to diversion of approaches to bridges.

Contracts as to works should incorporate Railways Clauses Act.

Where this not done, bridge would have to full width of street.

Narrowing of roadways by construction of bridges over them: by erecting piers.

Where no substantial damage from erecting piers for widening bridge.

Where injury depends on a question of law.

Approaches to bridge: "Present elevation."

8 & 9 VICT. c. 20. strued to refer to the elevation at the time the road or approach was taken by the company: (See *Attorney-General v. London and Southampton Railway Co.*, 1 R. C. 283.)

Company may make new bridge, instead of exercising a power of repairing old one. A power to repair an old bridge does not deprive the company of their original right to construct necessary works, and thus of making a new bridge in place of the old one: (*Wood v. North Staffordshire Railway Co.*, 1 M.N. & G. 278.)

Roads: not to be made for subsidiary purpose. (e) It is not lawful for a company to exercise their compulsory powers for the purpose of making a road for a subsidiary purpose, such as to avoid paying compensation to a neighbouring proprietor who was injured by the proximity of the railway, although it was admitted that saving expense was in general a good reason for exercising those powers: (*Dodd v. Salisbury and Yeovil Railway Co.*, 1 Giff. 158.)

Passage to platform not a road. It seems that a passage leading down to a platform used for the alighting of passengers is not a road within the meaning of the Railway Acts: (*Eton College v. Great Western Railway Co.*, 1 R. C. 200.)

Contracts as to roads. We have already seen that it is competent for a railway company to contract with a landowner as to the mode of making the works (See *supra*, p. 333.)

Incorporation of contracts in special act. But any particular stipulations upon this matter must be either embodied in the special act, or agreed upon with the landowner: (*Aldred v. North Midland Railway Co.*, 1 R. C. 404.)

As to the binding force of such agreements, see *Edwards v. Grand Junction Railway Co.*, 7 Sim. 342; 1 R. C. 173; *Broynton v. London and North-Western Railway Co.*, 10 Bea. 238; 4 R. C. 553; and *ante*, p. 332, *et seq.*

Company are judges as to execution of works. That the railway company themselves, if they act *bonâ fide* and without caprice, are the judges of what works are to be constructed, and of the mode of constructing them, was held in several cases, amongst which we may cite, *London and Birmingham Railway Co. v. Grand Junction Canal Co.*, 1 R. C. 224; and *Priestley v. Manchester and Leeds Railway Co.*, 4 Y. & C. 72; 2 R. C. 134.

"Doing as little damage as can be." It must, however, be remembered that this principle is subject to the qualification imposed by the later words of the 16th section, "doing as little damage as can be," the construction of which is treated of in the cases cited below.

Alteration of course of rivers. (f) This includes navigable rivers, but does not give powers to divert or alter the entire course of navigable rivers, or to obstruct the entire navigation: (*Abraham v. Great Northern Railway Co.*, 20 L. J. (Q. B.) 322; 16 Q. B. 586; 15 Jur. 855.)

A railway may be constructed along a navigable river according to deposited plans; and upon an action for the obstruction brought by owners of vessels accustomed to navigate the river, it is not incumbent upon the defendants to show that they have purchased the portion of the bed of the river used for the railway from the owners. (*Ibid.*)

Building a bridge partly in the bed of a navigable river is not necessarily a nuisance; whether it is so or not in any particular instance is a question for a jury: (*Reg. v. Betts*, 16 Q. B. 1022; see *Mayor, &c., of Norwich v. Norfolk Railway Co.*, 4 El. & Bl. 397.)

(g) As to the crossing of roads, see ss. 46-48, *post*; bridges over roads, s. 49, *post*; and as to the substitution of roads for these interfered with, see s. 53, *post*.

Crossings—
Substitution of
roads.

tions in the levels of roads, made necessary on account of 8 & 9 Vict. c. 20. of a bridge within the limits of deviation, are accommodated within s. 16: (*Beardmer v. London and North-Western* Alterations of levels.
Co., 1 M.N. & G. 112; 1 H. & T. 161; 13 Jur. 327; 18
) 432.)

authorises a permanent and not merely a temporary diver- Permanent as well as tempo-
sible roads: (*Phillips v. London, Brighton, and South Coast* rary diversion
Co., 4 Giff. 46; 9 Jur. N. S. 348.) lawful.
a company were about to make a bridge over their line at Diversion by
les, instead of a skew bridge, as indicated on the plans, the change of plan.
of the road so carried over was complained of, and the
erred the matter to a competent person to say what extent
on was necessary in the interest of the company and the
Attorney-General v. Dorset Central Railway Co., 3 L. T. N.

as, however, that even after an award made under an agree- Excessive diver-
lining the extent to which a road should be diverted, the sion after award
would not be precluded from using their powers in order made.
to divert the road under the 16th section, such excessive
being merely a subject for compensation: (*Wood v. North*
ire Railway Co., 1 M.N. & G. 278.)
egard to the alteration of roads and the diminution of their
consequence of the construction of bridges and arches over
ante, p. 335.

ay company was allowed to "sink" a road so as to obtain Sinking road to
height for one of their arches passing over it, although by get proper height
occasional floods might occur: (*Aldred v. North Midland* for arch.
Co., 1 R. C. 404.)

conveniently" means more conveniently upon the whole "More con-
ng into effect the purposes of the act, with respect to the veniently."
well as the company: (See *Reg. v. Sharpe*, 3 R. C. 33;
ott, 3 R. C. 187; 3 Q. B. 543.)

re not to look at the convenience of the company alone, but
ommodation and convenience of those who have rights of
which are interfered with, of those who have immediate
the road, or persons using it of necessity in the ordinary
their business:" (*Per Cockburn, C. J., Reg. v. Wycombe*
Co., L. R. 2 Q. B. 320; see also p. 325.)

ction does not authorise a railway company to permanently Road cannot be
oad; neither can they so divert it where their special act permanently
expressly authorise it, although on the deposited plan the diverted without
d diversion road" be shown in the direction in which the express legisla-
is made, and their act empowers them to make the rail- tive authority.
he line delineated upon the plan, unless the diversion be
y necessary for the construction of the railway; and
re the line of railway crosses the road on a level, the road
carried over the railway, or the railway over the road, by
a bridge, in accordance with the provisions of s. 46, *post*:
Wycombe Railway Co., L. R. 2 Q. B. 310; 36 L. J. (Q. B.)

a railway company in constructing a bridge diverted the road Question of in-
le of 45° instead of 34°, which was the angle made at that convenience to
point by the old line of road, it was held by the Court of public properly
left to jury.

8 & 9 VICT. c. 20. Queen's Bench that the jury were rightly directed to consider whether any practical inconvenience arose to the public by the road being diverted more obliquely than before, and if they were of opinion that no material practical inconvenience was sustained by the public, and that an experienced engineer would have so constructed the bridge, to find a verdict for the company: (*Reg. v. Sharpe, ubi supra*; *Reg. v. London and North-Western Railway Co.*, 16 L. T. 485.)

On substitution of new for old road, soil of old road reverts to owner.

It seems that if a road is diverted by a company, and a new one substituted, the soil of the old road reverts to the owner discharged of the easement which the public have gained of a right of way over it: (*Marquis of Salisbury v. Great Northern Railway Co.*, 28 L. J. (C. P.) 40, 55, 57.)

"Station."

(h) It was held by the Vice-Chancellor of England that a road leading to the embankment of a railway, together with a platform and steps up the embankment, constituted a "station:" (*Lord Pat. v. Eastern Counties Railway Co.*, 3 R. C. 367.)

His Honour also held that if the platform and steps were taken away, the company could not be prevented, notwithstanding a prohibition in the act against the making or erection of roads, engines, stations, &c., within a mile of the plaintiff's house, from stopping their engines where they pleased, and that the passengers might then get in or out as they best could: (*Ibid.*)

In another case, also, although the company were forbidden to make their line within a certain distance of Eton, and to make a station within that distance, the Court held that they were not thereby prohibited from taking up and setting down passengers at the end of a passage, within the forbidden limits, and which communicated with the railway: (*Eton College v. Great Western Railway Co.*, 1 R. C. 200.)

It was likewise decided in this case, that two rooms in a public-house, near the entrance to the passage, hired for the purposes of a booking-office, did not constitute a station within the meaning of the prohibition: (*Ibid.*)

Land for stations without limits of deviation.

The right to erect a station upon land, part of which was within, and part beyond, the limits of deviation, seems to be conceded by the ruling of the Vice-Chancellor in a case in which the station was shown by the plans not to be within such limits, although the act gave power to erect the station, making it lawful, subject to the powers of deviation, to enter upon, take, and use such lands as should be necessary for the purpose: (*Crawford v. Chester and Holyhead Railway Co.*, 11 Jur. 917.)

Land authorised to be taken for line may be used for stations.

And Lord Cottenham, C., in another case, held that all land, authorised to be taken as necessary for the purpose of making and maintaining the railway and works, is liable to be so taken, whether necessary for the actual line of the railway, or for stations or other conveniences necessary for the working of the railway. The erection of a new station, or an enlargement of an old one, and sidings, were therefore within this description, enabling the company to take land described in the plans but not required for the formation of the line: (*Cother v. Midland Railway Co.*, 2 Ph. 469; 5 R. C. 187.)

His Lordship added: "If in the *Eton College v. Great Western & 9 Vict. c. 20.* *Quay Co.*, (1 R. C. 200), and *Lord Petre v. Eastern Counties Railway Co.*, (3 R. C. 367,) the companies could not have formed stations without special authority, what was the necessity for introducing special prohibitions, when, according to the plaintiffs' argument, the companies would, for want of special authority, have been incompetent to construct such stations?" (2 Ph. 474, 475; 5 R. C.

.) railway company being empowered by their acts to make arches Construction of the railway, and to erect stations on any of the neighbouring power to arch streets in the erection of buildings, and to purchase lands for that purpose, but so as not to interfere with the rights, under any local act, of any parish over which the railway should pass, a street within the jurisdiction of certain magistrates having been arched over for the erection of a station, the Lord Chancellor sent the case to a Court of Law, which decided that the company were entitled under their acts to do the thing complained of, if it was necessary or reasonably convenient for the construction of a station and of proper warehouses: (*Attorney-General v. Eastern Counties Railway Co.*, 2 R. C. 823; 10 M. & W. 12 L. J. (Exch.) 106.)

A clause in a special act directed that it should not be lawful for Buildings. the company to make or establish any public station, yards, wharves, houses, or other buildings within the plaintiff's estate. The word "public" was not held to govern the whole sentence, so as to enable the company to erect an engine-house and other works within the prescribed limits; but the company having already erected the engine-house, no injunction with respect to it was granted, though they were restrained from erecting any other building: (*Gordon v. Cheltenham and Great-Western Union Railway Co.*, 11 M. & W. 229; 2 R. C. 800.)

Where a railway company were by their act empowered to take Custom-house. land, provided that the whole of the land to be sold by the plaintiff should be devoted to the purposes of the railway, and the buildings erected therewith, it was held that they could erect a custom-house, part of which was to be used for other purposes, and part as a warehouse: (*Warden of Dover Harbour v. South-Eastern Railway Co.*, 11 M. & W. 886.)

And no breach of their act was held to be committed by a market Discretion of company, under the Markets and Fairs Clauses Consolidation Act, company in erection of buildings. in the neighbourhood of the market, erected a building to be used also as a market, although the plaintiff's land did not appear on the plans as land intended to be taken: (*Richards v. Scarborough Market Co.*, 23 L. J. (Ch.) 110.)

A railway company had a staircase at one of their stations for the Negligence in construction. use of passengers, leading from the arrival platform to the street; it was about six feet wide, had walls on each side, and wooden steps covered with brass, which had become smooth from use. A person, together with large numbers of others, had used these stairs, and in an accident, for months, slipped and hurt himself, and in an action for negligence against the defendants, relied on the evidence of the builder, who said that he thought brass dangerous, that lead would be proper and less slippery, and that there should be a hand

8 & 9 VICT. C. 20. rail. It was held by the Court of Common Pleas, that there was no evidence of negligence to go to the jury : (*Crafter v. Metropolitan Railway Co.*, 35 L. J. (C. P.) 132.)

Machinery :
steps leading
from an em-
bankment to a
platform are
"machinery."

(i) It was held by the Vice-Chancellor of England, in a case where the railway company had made a platform, with steps leading down to it from an embankment, that the steps came under the head of "machinery," and that a permanent ladder would be an "erection" within the words "machinery or other erection," contained in the special act : (*Lord Petre v. Eastern Counties Railway Co.*, 3 R. C. 367, 373.)

Interpretation of
this section—
meaning of
"necessary."

(j) Cockburn, C. J., gives the following exposition of this section :—"The section begins thus : 'Subject to the provisions and restrictions of this and the special act, and any act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway, or the accommodation works connected therewith,' to execute any of the following works, and, *inter alia*, to divert roads. I think that this portion of the section must be read with the last paragraph, 'They may do all other acts necessary for making, maintaining, altering, or repairing and using the railway.' Now, the interpretation that I put upon the whole section is, that the power conferred on a railway company for the construction of their railroad is confined to matters which are not only done in the construction of the railway, but which are necessary to its construction. . . . I think the meaning we ought to give to the word ['necessary'] is, that it is only necessary for the construction of the railway to permanently divert the road when the railway cannot be made without so diverting it :"' (2 L. R. (Q. B.) 319-321.) "Having power to divert or alter, they have the choice of doing it either by carrying it over or under or by the side of the railway ; but that is only conditional on its being necessary to do it for the purpose of constructing the railway. There is not a word in the section intimating that they have this power merely in order that they may construct the railway more economically, or save expense to the company :"' (*Per Lush, J.*, *Ibid.* 325)

Doing as little
damage as may
be.

(k) This proviso does not apply to what is to be done in execution of the company's powers, but to the manner of doing it. The work is to be executed with as little damage as possible, and compensation is to be made for that damage ; but the proviso does not affect the work itself to be done : (*Per Lord Campbell, C. J.*, *Reg. v. East and West India Docks, &c., Railway Co.*, 2 El. & Bl. 466 ; 22 L. J. (Q. B.) 380.)

Plea not bad for
omitting these
words.

A plea justifying an obstruction to part of the course of a navigable river under this section, which did not allege that the defendants had done as little damage as could be, was held not to be bad for that omission : (*Abraham v. Great Northern Railway Co.*, 16 Q. B. 536.)

Special damage
to be proved.

An action will not lie except where special damage is sustained : (*Watkins v. Great Northern Railway Co.*, 16 Q. B. 961 ; *Tanner v. South Wales Railway Co.*, 5 El. & Bl. 618.) See s. 55, *post*.

Injunctions
under this
section.

An injunction will be granted in equity where it is clear that a railway company are exceeding the limits of the powers granted by this section : (*Kemp v. London and Brighton Railway Co.*, 1 R. C. 495 ; *Manser v. Northern and Eastern Counties Railway Co.*, 2 R. C.

; *Ware v. Regent's Canal Co.*, 3 De G. & Jo. 212; *Dodd v. Shrewsbury and Yeovil Railway Co.*, 1 Giff. 158; *Simpson v. South*
Staffordshire Water-Works Co., 6 N. R. 184; 13 W. R. 729.)

This section does not empower a railway company to divert a public road so as to place it upon land of which the company has acquired the ownership: (*Rangeley v. Midland Railway Co.*, L. Ch. App. 306.)

Road not to be diverted on to lands not acquired by company.

and it has already been shown that the Court will not allow a company to act in contravention of a contract entered into with a landowner concerning the mode of execution of the works: (See *Davson v. Cockermouth and Workington Railway Co.*, 7 R. C. 613; *Card v. Grand Junction Railway Co.*, 1 My. & Cr. 650; 1 R. C. 613; 6 L. J. N. S. (Ch.) 47; *Wood v. North Staffordshire Railway Co.*, 1 M. & G. 278.)

Breach of contract with landowner.

If no individual in particular suffer damage in consequence of excess of power by a company, the Attorney-General is the proper party to sue: (*Ware v. Regent's Canal Co.*, 3 De G. & Jo. 212; *Attorney-General v. Ely, Haddenham, and Sutton Railway Co.*, L. Ch. App. 106.)

Information by Attorney-General.

Unnecessary damage, and the infraction of the maxim, "Sic ut tuum alienum non laedas," are good grounds for the interference of the Court: (*Davson v. Paver*, 4 R. C. 81.)

Unnecessary damage.

But subject to these restrictions, namely, that they must not exceed their powers, and that they must do "as little damage as may be," the company may execute the works as they themselves judge best, not, however, acting oppressively or capriciously: (*London and Birmingham Railway Co. v. Grand Junction Canal Co.*, 1 M. & G. 224; *Priestley v. Manchester and Leeds Railway Co.*, 4 Y. & C. 2 R. C. 134; and see *Attorney-General v. Ely, Haddenham, and Sutton Railway Co.*, L. R. 6 Eq. 106.)

Company are judges of modes of executing works.

It is, however, it be not clear to the Court whether or not the damage arising from a particular mode of constructing the works is sufficient for an injunction, it will call in the assistance of competent persons upon points of engineering science: (*Coats v. Shrewsbury and Birmingham Railway Co.*, 1 Russ. & My. 181; *Attorney-General v. Great Central Railway Co.*, 3 L. T. N. S. 608; and see *Webb v. Manchester and Leeds Railway Co.*, 4 My. & Cr. 116; 1 R. C. 116.)

Reference to experts.

The Court of Chancery will not interfere even in a case of clear excess of the powers of a company unless substantial damage is proved: (*Attorney-General v. Eastern Counties Railway Co.*, 3 R. C. 116; *Holyoake v. Shrewsbury and Birmingham Railway Co.*, 5 R. C. 116; *Shersy v. South-Eastern Railway Co.*, 13 Jur. 689; *Wandsworth Board of Works v. London and South-Western Railway Co.*, 31 L. Ch. 854.)

No interference without substantial damage.

So where a railway company diverts a road *ultra vires*, but with *bona fide* view to the convenience of the public, "it is not the province of a Court of Equity to interfere to compel the company to do something other than that they have, which would be *ultra vires*, therefore legal, but would be more inconvenient to the public, than the persons complaining, than that which exists:" (per Lord Gifford, *Attorney-General v. Ely, Haddenham, and Sutton Railway Co.*, L. R. 6 Eq. 106.)

s & 9 VICT. c. 20. The Legislature, in granting powers to execute certain works, must be taken to have foreseen that damage must arise from them, and in such cases the Court will leave the plaintiff to his remedy under s. 68 of the Lands Clauses Act, (*Ware v. Regent's Canal Co.*, 3 De G. & Jo. 212,) or to his remedy at law, (*Holyoake v. Shrewsbury and Birmingham Railway Co.*, 5 R. C. 421; *Sheray v. South-Eastern Railway Co.*, 13 Jur. 689; *Dawson v. Paver*, 4 R. C. 81; *Gordon v. Cheltenham and Great Western Union Railway Co.*, 5 Bea. 229; 2 R. C. 800;) or if the works can clearly be completed without the infliction of serious additional damage, will allow the motion for an injunction to stand over until the hearing, with leave to the parties to produce fresh evidence as to the desirability of the modes of construction they respectively suggest: (*Freehold General Investment Co. v. Metropolitan Railway Co.*,* 1 W. N. 66.)

Inevitable damage; compensation under s. 68 of Lands Clauses Act.
Legal Remedy.

Where works may be completed without additional damage.

Sir J. Rolt's Act.

In place of directing the trial of issues by the Common Law Courts, the Court of Chancery now has jurisdiction, by Sir J. Rolt's Act, (25 & 26 Vict. c. 42,) to decide questions of law and fact, and it is at least unnecessary that trials should be directed. And it has been held that it is imperative upon the Court to exercise this jurisdiction: (*Re Hooper*, 32 L. J. (Ch.) 55; *Curlewis v. Carter*, 33 L. J. (Ch.) 370;) but there is still some doubt upon this point.

Lord Cairns's Act.

The Court of Chancery has also the power to summon a jury under Lord Cairns's Act, (21 & 22 Vict. c. 27,) for the purpose of trying the question of fact and assessing damages, the practice in some cases being to reserve the question of equity until after a verdict has been given.

Works may be commenced before proceeding under s. 68 of Lands Clauses Act.

A railway company will not be restrained from commencing their works on the ground that compensation under s. 68 of the Lands Clauses Act has not been assessed: (*Hutton v. London and South-Western Railway Co.*, 7 Hare, 259.)

See further as to injury caused by the construction of the works, and compensation for such injury, the notes to s. 68 of the Lands Clauses Consolidation Act, 1845, *ante*.

Works below high-water mark not to be executed without the consent of the Lords of the Admiralty.

XVII. It shall not be lawful for the company to construct on the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, where and so far up the same as the tide flows and reflows, any work, or to construct any railway or bridge across any creek, bay, arm of the sea, or navigable river, where and so far up the same as the tide flows and reflows, without the previous consent of Her Majesty, her heirs and successors, to be signified in writing under the hands of two of the Commissioners of Her Majesty's Woods, Forests, Land Revenues, Works, and Buildings, and of the Lord High

* A prescriptive right of twenty years' duration, urged by the plaintiff in this case, was held not to affect the question.

Admiral of the United Kingdom of *Great Britain* and *Ireland*, or the Commissioners for executing the office of Lord High Admiral aforesaid for the time being, to be signified in writing under the hand of the Secretary of the Admiralty, and then only according to such plan and under such restrictions and regulations as the said Commissioners of Her Majesty's Woods, Forests, Land Revenues, Works, and Buildings, and the said Lord High Admiral, or the said Commissioners may approve of, such approval being signified as last aforesaid; and where any such work, railway, or bridge shall have been constructed it shall not be lawful for the company at any time to alter or extend the same without obtaining, previously to making any such alteration or extension, the like consents or approvals; and if any such work, railway, or bridge shall be commenced or completed contrary to the provisions of this act, it shall be lawful for the said Commissioners of Her Majesty's Woods, Forests, Land Revenues, Works, and Buildings, or the said Lord High Admiral, or the said Commissioners for executing the office of Lord High Admiral, to abate and remove the same, and to restore the site thereof to its former condition, at the cost and charge of the company; and the amount thereof may be recovered in the same manner as a penalty is recoverable against the company.

XVIII. It shall be lawful for the company, for the purpose of constructing the railway, to raise, sink, or otherwise alter the position of any of the water-courses, water-pipes, or gas-pipes belonging to any of the houses adjoining or near to the railway, and also the mains and other pipes laid down by any company or society who may furnish the inhabitants of such houses or places with water or gas, and also to remove all other obstructions to such construction, so as the same respectively be done with as little detriment and inconvenience to such company, society, or inhabitants as the circumstances will admit, and be done under the superintendence of the company to which such water-pipes or gas-pipes belong, and of the several commissioners or trustees, or persons having control of the pavements, sewers, roads, streets, highways, lanes, and other public passages and places within the parish or district where such mains, pipes, or obstructions shall be

8 & 9 Vict. c. 23.
—
Alteration of
water and gas
pipes, &c.

3 & 9 VICT. c. 20. situate, or of their surveyor, if they or he think fit to attend, after receiving not less than forty-eight hours' notice for that purpose.

Company not to disturb pipes until they have laid down others.

XIX. Provided always, That it shall not be lawful for the company to remove or displace any of the mains or pipes, (other than private service pipes,) syphons, plugs, or other works belonging to any such company or society, or to do anything to impede the passage of water or gas into or through such mains or pipes, until good and sufficient mains and pipes, syphons, plugs, and all other works necessary or proper for continuing the supply of water or gas as sufficiently as the same was supplied by the mains or pipes proposed to be removed or displaced, shall, at the expense of the company, have been first made and laid down in lieu thereof, and be ready for use, in a position as little varying from that of the pipes or mains proposed to be removed or displaced, as may be consistent with the construction of the railway, and to the satisfaction of the surveyor or engineer of such water or gas company or society, or, in case of disagreement between such surveyor or engineer and the company, as a justice shall direct.

Pipes not to be laid contrary to any act, and eighteen inches surface road to be retained.

XX. It shall not be lawful for the company to lay down any such pipes contrary to the regulations of any act of Parliament relating to such water or gas company or society, or to cause any road to be lowered for the purposes of the railway, without leaving a covering of not less than eighteen inches from the surface of the road over such mains or pipes.

Company to make good all damages.

XXI. The company shall make good all damage done to the property of the water or gas company or society, by the disturbance thereof, and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with the mains, pipes, or works of such water or gas company, or society, or with the private service pipes of any person supplied by them with water.

When railway crosses pipes, company to make a culvert.

XXII. If it shall be necessary to construct the railway or any of the works over any mains or pipes of any such water or gas company or society, the company shall, at

their own expense, construct and maintain a good and sufficient culvert over such main or pipe, so as to leave the same accessible for the purpose of repairs. 8 & 9 VICT. c. 20.

XXIII. If by any such operations as aforesaid the company shall interrupt the supply of any water or gas they shall forfeit twenty pounds for every day that such supply shall be so interrupted, and such penalty shall be appropriated to the benefit of the poor of the parish in which such obstruction shall occur, in such manner as the overseers of the poor of the parish shall direct. Penalty for obstructing supply of gas or water.

XXIV. If any person wilfully obstruct any person acting under the authority of the company in the lawful exercise of their power, in setting out the line of the railway, or pull up or remove any poles or stakes driven into the ground for the purpose of so setting out the line of the railway, or deface or destroy any marks made for the same purpose, he shall forfeit a sum not exceeding five pounds for every such offence. Penalty for obstructing construction of railway.

DRAINAGE OF LANDS.

And whereas there are large tracts of land in *Ireland* subject to flood and injury by water, and the rivers, streams, and watercourses are in many places obstructed by shoals, insufficient bridges, culverts, weirs, and other works, whereby the waters thereof are elevated above their natural level: And whereas an act of Parliament was passed in the second year of the reign of his late Majesty King *William* the Fourth, intituled "An Act to empower landed proprietors in *Ireland* to sink, embank, and remove obstructions in rivers:" And whereas another act was passed in the sixth year of the reign of her present Majesty, intituled "An Act to promote the drainage of lands, and improvement of navigation and water power in connexion with such drainage, in *Ireland*;" and by the said last-mentioned act public commissioners were appointed to carry the said last-recited act into execution: And whereas it is essential, for carrying into effect the purposes of the said acts, and for the improvement of agriculture, that ample provision be made in all railway works in *Ireland* for the free and uninterrupted passage of the waters at such level as will Drainage of lands. —
1 & 2 WILL. IV. c. 57.
5 & 6 VICT. c. 89.

8 & 9 VICT. c. 20. be sufficient not only for the present, but all future discharge of the waters from lands crossed by or being on either side of such works, and that the bridges of railways crossing all watercourses, rivers, lakes, or estuaries which are or hereafter may be made navigable shall be so constructed as to admit of the commodious navigation of the same: Therefore, with respect to the provision to be made for the drainage of land in *Ireland* which may be crossed by the railway, and for the protection of the navigation connected therewith, be it enacted as follows:—

The company from time to time to submit to the Drainage Commissioners in *Ireland* plans, &c., of the portion of the railway which they are about to execute.

XXV. If the special act shall authorise the construction of a railway in *Ireland*, the company shall, and they are hereby required, from time to time, before proceeding to construct any portion of the railway, to submit to the commissioners acting in execution of the said act of the sixth year of her present Majesty, or any act amending the same, such plans, sections, and surveys as shall be necessary to enable the said commissioners to decide upon the number and adequacy of the waterways of all bridges, culverts, tunnels, watercourses, and other works across the line of such portion as aforesaid of the railway, for the free and uninterrupted discharge of the waters from all lands crossed by or lying on either side of or near the railway, at such level as shall in the opinion of the said commissioners be sufficient for the present and prospective drainage and improvement of such lands, and (in cases of rivers, lakes, estuaries, or watercourses, which are now or may be capable of being made navigable) upon the height and adequacy of all bridges and works crossing the same, for the commodious navigation thereof.

Such commissioners to investigate and report on the works necessary for drainage.

XXVI. The said commissioners shall, and they are hereby required, without any unnecessary delay, to investigate, by such means as to them shall seem fit, the adequacy of all such works for such purposes as aforesaid, and to decide and certify, by a writing under their hands, or the hands of any two of them, the number, situation, and least possible dimensions as to breadth, depth, and height of the several openings of such bridges, culverts, tunnels, or other works connected with such portion of the railway as aforesaid, which shall be necessary for the passage of water, or for navigation under or across such railway; and it shall not be lawful for the company to proceed with the

execution of any of the works connected with any portion of the railway without having first obtained such a certificate as aforesaid respecting such portion of the railway, under the hands of the said commissioners or any two of them, as aforesaid; nor shall the company be at liberty to deviate from such certificate in respect to such works, nor to execute the same otherwise than in conformity therewith, without the previous approbation in writing of the said commissioners.

XXVII. It shall be lawful for the said commissioners to apply by petition in a summary way to the Court of Chancery, complaining of any omission on the part of the company to submit such plans, sections, and surveys to the said commissioners as aforesaid, or of the omission to construct any such bridge, culvert, tunnel, or other works for the passage of water, in such manner as shall be so certified by the said commissioners, and thereupon it shall be lawful for the said Court to direct such works to be made or constructed by the company in such manner as shall be conformable to the certificate of the said commissioners, and to the said Court shall seem necessary or proper, and to make from time to time such further or other order for restraining the company or any other persons from proceeding with any of the works connected with such portion of railway, except in conformity with the certificate of the said commissioners, and to issue any writ or injunction for the purpose aforesaid; and such Court shall have power to award costs to be paid by such company or persons.

Summary application to the Court of Chancery to enforce the execution of such works.

XXVIII. Nothing in this or the special act shall extend or be construed to prejudice or affect the powers or authorities of the commissioners acting in execution of the said act of the sixth year of her present Majesty, but all such powers shall be in full force as to the formation of any cut, river, or watercourse across the railway, but such power shall not be exercised so as to prevent or obstruct the working or using of the railway.

Saving of the powers of the Drainage Commissioners.

XXIX. And whereas it is expedient to encourage the establishment of manufactories to be worked by water power in Ireland: Be it therefore enacted, That whenever

The Drainage Commissioners in Ireland to have power to decide questions

8 & 9 Vict. c. 20.

as to the execution of works, or to execute works for carrying watercourses across the railway.

it may be requisite for the formation of a watercourse for manufacturing purposes to construct an arch, culvert, tunnel, or watercourse beneath or an aqueduct above any railway in *Ireland*, and that differences shall have arisen between the directors of such railway and the person interested in obtaining the water power either as to the manner in which such works shall be executed, or the amount of compensation which should be paid, it shall be lawful to refer the questions in issue to the commissioners acting under the said recited act of the fifth and sixth years of the reign of Her Majesty Queen *Victoria*, and their decision thereon shall be final and conclusive; and if the said commissioners shall be of opinion that the proposed works can be executed without injury to the railway, and if they shall think proper so to do, they may undertake the execution of so much of the said works as shall be in connexion with such railway, at the expense of the parties for whose benefit the watercourse shall be made, with the same powers and authorities as are given by the said act for the execution of any works for drainage.

TEMPORARY USE OF LANDS.

Temporary use of lands.

Company may occupy temporarily private roads within five hundred yards of the railway.

And with respect to the temporary occupation of lands near the railway during the construction thereof, be it enacted as follows:—

XXX. Subject to the provisions herein and in the special act contained, it shall be lawful for the company, at any time before the expiration of the period by the special act limited for the completion of the railway, to enter upon and use any existing private road, being a road gravelled or formed with stones or other hard materials, and not being an avenue or a planted or ornamental road, or an approach to any mansion-house, within the prescribed limits, if any, or, if no limits be prescribed, not being more than five hundred yards distant from the centre of the railway as delineated on the plans; but before the company shall enter upon or use any such existing road, they shall give three weeks' notice of their intention to the owners and occupiers (*a*) of such road, and of the lands over which the same shall pass, and shall in such notice state the time during which and the purposes for which they intend to occupy such road, and shall pay to the owners

and occupiers of such road, and of the lands through which the same shall pass, such compensation for the use and occupation of such road, either in a gross sum of money or by half-yearly instalments, as shall be agreed upon between such owners and occupiers respectively and the company, or in case they differ about the compensation the same shall be settled by two justices, in the same manner as any compensation not exceeding fifty pounds is directed to be settled by the said Lands Clauses Consolidation Act.

(a) Where a tenant holding land for a term of years, with a strict clause against alienation or subletting, assigns a part of the land to a company for a temporary purpose, the landlord may maintain ejectment against both the company and the tenant for the forfeiture: (*Legg v. Belfast, &c., Railway Co.*, 1 Ir. C. L. R. 124 n.)

XXXI. It shall be lawful for the owners and occupiers of any such road, and of the lands over which the same passes, within ten days after the service of the aforesaid notice, by notice in writing to the company, to object to the company making use of such road, on the ground that other roads, such as the company are hereinbefore authorised to use for the purposes aforesaid, or that some public road would be more fitting to be used for the same; and upon the objection being so made such proceedings may be had as are hereinafter mentioned with respect to lands temporarily occupied by the company, in respect of which three weeks' notice is hereinafter required to be given, and in the same manner as if in the provisions relative to such proceedings in the word road or roads, or the words road and the land over which the same passes, as the case may require, had been substituted in such provisions for the word lands.

XXXII. Subject to the provisions herein and in the special act contained, it shall be lawful for the company at any time before the expiration of the period by the special act limited for the completion of the railway, without making any previous payment, tender, or deposit, to enter upon any lands within the prescribed limits, or, if no limits be prescribed, not being more than two hundred yards distant from the centre of the railway as delineated on the plans, and not being a garden, orchard, or plantation attached or belonging to a house, nor a park, planted

8 & 9 VICT. c. 20.

Power to owners and occupiers of road and land to object that other roads should be taken.

Power to take temporary possession of land without previous payment of price.

8 & 9 VICT. c. 20. walk, avenue, or ground ornamentally planted, and not being nearer to the mansion-house of the owner of any such lands than the prescribed distance, or if no distance be prescribed, then not nearer than five hundred yards therefrom, and to occupy the said lands so long as may be necessary for the construction or repair of that portion of the railway, or of the accommodation works connected therewith, hereinafter mentioned, and to use the same for any of the following purposes; (that is to say,)

For the purpose of taking earth or soil by side cuttings therefrom;

For the purpose of depositing spoil thereon;

For the purpose of obtaining materials (a) therefrom for the construction or repair of the railway or such accommodation works as aforesaid; or

For the purpose of forming roads thereon to or from or by the side of the railway:

And in exercise of the powers aforesaid it shall be lawful for the company to deposit and also to manufacture and work upon such lands materials of every kind used in constructing the railway, and also to dig and take from out of any such lands any clay, stone, gravel, sand, or other things that may be found therein useful or proper for constructing the railway or any such roads as aforesaid, and for the purposes aforesaid to erect thereon workshops, sheds, and other buildings of a temporary nature: Provided always, that nothing in this act contained shall exempt the company from an action for nuisance or other injury, if any done, in the exercise of the powers hereinbefore given, to the lands or habitations of any party other than the party whose lands shall be so taken or used for any of the purposes aforesaid: Provided also, that no stone or slate quarry, brick field, or other like place, which at the time of the passing of the special act shall be commonly worked or used for getting materials therefrom for the purpose of selling or disposing of the same, shall be taken or used by the company, either wholly or in part, for any of the purposes lastly hereinbefore mentioned.

Digging materials.

(a) The permanent taking of land for the purpose of taking or excavating therefrom materials for the construction of the railway, would seem to be unlawful under the general provisions of the railways acts: (*Bentinck v. Norfolk Estuary Co.*, 8 De G. M. & G. 714;) and that even where the land so attempted to be taken is

within the limits of deviation: (*Eversfield v. Mid-Sussex Railway* 8 & 9 VICT. c. 20. Co., 3 De G. & J. 286; 1 Giff. 153.)

The 32d section of the Railways Clauses Act is limited strictly to the temporary purposes mentioned in it; and although the company are generally the judges of the land they intend to take under their compulsory powers, they will, it seems, not be allowed to give notice under this section, without specifying the particular purpose for which they require the land: (*Poynder v. Great Northern Railway Co.*, 16 Sim. 3; 5 R. C. 201.) But see *Lund v. Midland Railway Co.*, 34 L. J. (Ch.) 276, in which no such notice had been given, and the Master of the Rolls refused to restrain the company from taking the land, as he would not take it upon himself to say that it was not necessary for the purpose of the construction of the line. But the Lords Justices discharged his Honour's order, the motion being ordered to stand to the hearing, and the company undertaking not to proceed under the notice: (*Ibid.* 277.)

Notice to state purpose for which land required.

Under s. 84 of the Lands Clauses Act, the company cannot enter upon, or permanently use any land until after they have paid for it, except for the purpose of taking levels, boring, and setting out the line of works, making compensation for damage caused by any such means. See *ante*, pp. 249-253.

XXXIII. In case any such lands shall be required for spoil banks or for side cuttings, or for obtaining materials for the construction or repair of the railway, the company shall before entering thereon (except in the case of accident to the railway requiring immediate reparation) give three weeks' notice in writing to the owners and occupiers of such lands of their intention to enter upon the same for such purposes; and in case the said lands are required for any of the other purposes hereinbefore mentioned the company shall (except in the cases aforesaid) give ten days like notice thereof, and the company shall in such notices respectively state the substance of the provisions hereinafter contained respecting the right of such owner or occupier to require the company to purchase any such lands, or to receive compensation for the temporary occupation thereof, as the case may be.

Company to give notice previous to such temporary possession.

The notice required under this section should specifically state for which of the purposes mentioned in the preceding section it is proposed to exercise the power of temporary user: (*Poynder v. Great Northern Railway Co.*, 16 Sim. 3; 5 R. C. 201; and see *Lund v. Midland Railway Co.*, 34 L. J. (Ch.) 276.) See preceding section.

Notice to specify purpose for which land to be used.

XXXIV. The said notice shall either be served personally on such owners and occupiers, or left at their last usual place of abode, if any such can, after diligent inquiry,

Service of notices on owners and occupiers of lands.

8 & 9 VICT. c. 20. be found, and in case any such owner shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands,

Power to owner to object that other lands ought to be taken.

XXXV. In any case in which a notice of three weeks is hereinbefore required to be given it shall be lawful for the owner or occupier of the lands therein referred to, within ten days after the service of such notice, by notice in writing to the company, to object to the company making use of such lands, either on the ground that the lands proposed to be taken for the purposes aforesaid, or some part thereof, or of the materials contained therein, are essential to be retained by such owner, in order to the beneficial enjoyment of other neighbouring lands belonging to him, or on the ground that other lands lying contiguous or near to those proposed to be taken would be more fitting to be used for such purposes by the company; and upon objection being so made such proceedings may be had as hereinafter mentioned.

Power to two justices to order that the lands and materials shall not be taken.

XXXVI. If the objection so made be on the ground that the lands proposed to be taken, or some part thereof, or of the materials contained therein, are essential to be retained by the owner in order to the beneficial enjoyment of other neighbouring lands belonging to him, it shall be lawful for any justice, on the application of such owner, to summon the company to appear before two justices at a time and place to be named in the summons, such time not being later than the expiration of the said twenty-one days' notice; and on the appearance of the company, or, in their absence, upon proof of due service of the summons, it shall be lawful for such justices to inquire into the truth of such ground of objection; and if it appear to such justices that for some special reason, to be stated in the order after mentioned, the lands so proposed to be taken, or any part thereof, or of the materials contained therein, are essential to be retained by the owner of such lands in order to the beneficial enjoyment of other neighbouring lands belonging to him, and ought not therefore to be taken, or used by the company, it shall be lawful for such justices, by writing under their hands, to order that the lands so proposed to

be taken, or some part thereof, or of the materials contained therein, to be specified in such order, shall not be taken or used by the company, and after service of such order on the company it shall not be lawful for them to take or use, without the previous consent in writing of the owner thereof, any of the lands or materials which by such order they are ordered not to take or use.

XXXVII. If the objection so made as aforesaid be on the ground that other lands lying contiguous to those proposed to be taken, and being sufficient in quantity, and such as the company are hereinbefore authorised to use for the purposes aforesaid, would be more fitting to be used by the company, and if in such case the company shall refuse to occupy such other lands in lieu of those mentioned in the notice, it shall be lawful for any justice, on the application of such owner or occupier, to summon the company and the owners and occupiers of such other lands to appear before two justices at a time and place to be named in such summons, such time not being more than fourteen days after such application, nor less than seven days from the service of such summons; and on the appearance of the parties, or, in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to determine summarily which of the said lands shall be used by the company for the purposes aforesaid, and to authorise the company to occupy and use the same accordingly.

XXXVIII. If in the case last mentioned it shall appear to such justices, upon the inquiry before them, that the lands of any other party not summoned before them, being sufficient in quantity, and such as the company are hereinbefore authorised to take or use for the purposes aforesaid, would be more fitting to be used by the company than the lands of the person who shall have been so summoned as aforesaid, it shall be lawful for the said justices to adjourn such inquiry, and to summon such other person to appear before them at any time, not being more than fourteen days from such inquiry, nor less than seven days from the service of such summons; and on the appearance of the parties, or, in the absence of any of them, on proof of due service of the summons, it shall be lawful for such justices

8 & 9 VICT. c. 20. to determine finally which lands shall be used for the purposes aforesaid, and to authorise the company to occupy and use the same accordingly.

The company to give sureties, if required.

XXXIX. Before entering, under the provisions hereinbefore contained, upon any such lands as shall be required for spoil banks or for side cuttings, or for obtaining materials or forming roads as aforesaid, the company shall, if required by the owner or occupier thereof, seven days at least before the expiration of the notice to take such lands as hereinbefore mentioned, find two sufficient persons, to be approved of by a justice, in case the parties differ, who shall enter into a bond to such owner or occupier in a penalty of such amount as shall be approved of by such justice, in case the parties differ, conditioned for the payment of such compensation as may become payable in respect of the same in manner herein mentioned.

Company to separate the lands before using them.

XL. Before the company shall use any such lands for any of the purposes aforesaid, they shall, if required so to do by the owner or occupier thereof, separate the same by a sufficient fence from the lands adjoining thereto, with such gates as may be required by the said owner or occupier for the convenient occupation of such lands, and shall also, to all private roads used by them as aforesaid, put up fences and gates in like manner, in all cases where the same may be necessary to prevent the straying of cattle from or upon the lands traversed by such roads, and in case of any difference between the owners or occupiers of such roads and lands and the company as to the necessity for such fences and gates, such fences and gates as any two magistrates shall deem necessary for the purposes aforesaid, on application being made to them in like manner as hereinbefore is provided in respect to the use of such roads.

Lands taken for getting materials, &c., to be worked as the surveyor of owner may direct.

XLI. That if any land shall be taken or used by the company, under the provisions of this or the special act, for the purpose of getting materials therefrom for the construction or repair of the railway or the accommodation works connected therewith, they shall work the same in such manner as the surveyor or agent of the owner of such land shall direct, or, in case of disagreement between such sur-

veyor or agent and the company, in such manner as any justice shall direct, on the application of either party, after notice of the hearing the application shall have been given to the other party.

XLII. In all cases in which the company shall in exercise of the powers aforesaid enter upon any lands for the purpose of making spoil banks or side cuttings thereon, or for obtaining therefrom materials for the construction or repair of the railway, it shall be lawful for the owners or occupiers of such lands, or parties having such estates or interests therein as, under the provisions in the said Lands Clauses Consolidation Act mentioned, would enable them to sell or convey lands to the company, at any time during the possession of any such lands by the company, and before such owners or occupiers shall have accepted compensation from the company in respect of such temporary occupation, to serve a notice in writing on the company requiring them to purchase the said lands, or the estates and interests therein capable of being sold and conveyed by them respectively; and in such notice such owners or occupiers shall set forth the particulars of such their estate or interest in such lands, and the amount of their claim in respect thereof: and the company shall thereupon be bound to purchase the said lands, or the estate and interest therein capable of being sold and conveyed by the parties serving such notice.

Owners of lands may compel company to purchase lands so temporarily occupied.

XLIII. In any of the cases aforesaid, where the company shall not be required to purchase such lands, and in all other cases where they shall take temporary possession of lands by virtue of the powers herein or in the special act granted, it shall be incumbent on the company, within one month after their entry upon such lands, upon being required so to do, to pay to the occupier of the said lands the value of any crop or dressing that may be thereon, as well as full compensation for any other damage of a temporary nature which he may sustain by reason of their so taking possession of his lands, and shall also from time to time during their occupation of the said lands pay half-yearly to such occupier or to the owner of the lands, as the case may require, a rent to be fixed by two justices in case the parties differ, and shall also, within six months after

Compensation to be made for temporary occupation.

8 & 9 VICT. c. 20. they shall have ceased to occupy the said lands, and not later than six months after the expiration of the time by the special act limited for the completion of the railway, pay to such owner and occupier, or deposit in the bank for the benefit of all parties interested, as the case may require, compensation for all permanent or other loss, damage, or injury that may have been sustained by them by reason of the exercise, as regards the said lands, of the powers herein or in the special act granted, including the full value of all clay, stone, gravel, sand, and other things taken from such lands.

Compensation to be ascertained under the Lands Clauses Act.

XLIV. The amount and application of the purchase-money and other compensation payable by the company in any of the cases aforesaid shall be determined in the manner provided by the said Lands Clauses Consolidation Act for determining the amount and application of the compensation to be paid for lands taken under the provisions thereof.

LANDS FOR EXTRAORDINARY PURPOSES.

Lands for additional stations.

Land to be taken for additional stations, &c.

XLV. And be it enacted, That it shall be lawful for the company, in addition to the lands authorised to be compulsorily taken by them under the powers of this or the special act, to contract with any party (a) willing to sell the same for the purchase of any land adjoining or near to the railway, not exceeding in the whole the prescribed number of acres, for extraordinary purposes (b); (that is to say,)

For the purpose of making and providing additional stations, yards, wharfs, and places for the accommodation of passengers, and for receiving, depositing, and loading or unloading goods or cattle to be conveyed upon the railway, and for the erection of weighing machines, toll-houses, offices, warehouses, and other buildings and conveniences:

For the purpose of making convenient roads or ways to the railway, or any other purpose which may be requisite or convenient for the formation or use of the railway.

Power under Lands Clauses Act to purchase lands for extraordinary purposes.

(a) See ss. 12-14 of the Lands Clauses Act, 1845, (*ante*), whereby power is given to all parties to sell to the promoters, in case they are

authorised to purchase the same by their special act, any lands for 8 & 9 Vict. c. 20. extraordinary purposes. By s. 14, the company are not to purchase from persons under disability more than the prescribed quantity of land, and if land so purchased be afterwards sold, such persons may not sell to the company any other lands for extraordinary purposes in lieu of them. Where parties are under disability.

The cases collected under s. 16, (*ante*), as to the power of a railway company to construct the works mentioned under that section, may be consulted in reference to the restrictions imposed by the Courts upon the company in the execution of works authorised by the act.

The lands must be used for the purpose for which they were taken, and for works authorised by the act: (*Stockton and Darlington Railway Co. v. Brown*, 9 H. L. 246.) Lands to be used for authorised purposes.

(b) This section does not apply to lands within the limits of deviation, but to "such lands wanted for additional conveniences only as landowners may be willing to sell the company, and which lie beyond the limits of deviation:" (*Per Parke, B., Sadd v. Maldon, &c., Railway Co.*, 6 Exch. 143; 6 R. C. 779.) Section applies only to lands beyond limits of deviation.

By s. 8 of the Railways Clauses Act, 1863, (26 & 27 Vict. c. 92,) power is given to railway companies whose acts have passed since July 28, 1863, and incorporate Part I. of the Amendment Act, to take additional land for the purposes of works executed under the direction of the Board of Trade for the safety of the public at level crossings. See the act, *post*. Land may be taken for lodges, &c., under 26 & 27 Vict. c. 92.

CROSSING OF ROADS, AND CONSTRUCTION OF BRIDGES.

And with respect to the crossing of roads, or other interference (a) therewith, be it enacted as follows:—

XLVI. If the line of the railway cross any turnpike road (b) or public highway, then (except where otherwise provided by the special act) either such road shall be carried over the railway, or the railway shall be carried over such road, by means of a bridge, of the height and width and with the ascent or descent by this or the special act in that behalf provided; and such bridge, with the immediate approaches, and all other necessary works connected therewith, shall be executed and at all times thereafter maintained at the expense of the company: Provided always, that, with the consent of two or more justices in petty sessions, as after mentioned (c), it shall be lawful for the company to carry the railway across any highway, other than a public carriage road, on the level (d).

(a) The words "with respect to the crossing of roads, or other interference therewith," apply to roads obstructed for a temporary Section applies only to temporary interference.

Crossing of roads, and construction of bridges.

Crossing of roads.

§ 49 Vicr. c. 20. purpose, and not to the case of changing one road into another of a different description: (*Tanner v. South Wales Railway Co.*, 5 E. & B. 618; 25 L. J. (Q. B.) 7.)

Power of district surveyors to interfere with works.

It is not, however, competent for the district surveyors to put up fences on roads so as to prevent the company from crossing them on a level; they are not guardians of the public safety, and they should proceed for an injunction or mandamus if they are dissatisfied with the works of the company: (*London and Brighton Railway Co. v. Blake*, 2 R. C. 322.)

Questions for Courts of Law.

In cases where there is a question for a Court of Law whether certain conditions imposed as precedent to the exercise of the powers under an act of Parliament have been fulfilled, Courts of Equity have granted injunctions against the interference with roads, the plaintiff undertaking to bring an action against the company: (*Kemp v. London and Brighton Railway Co.*, 1 R. C. 495; *Northam Bridge and Roads Co. v. London and Southampton Railway Co.*, 1 R. C. 653, 665.)

Injunction.

Where, however, a clearly illegal act has been done by the company, as, for instance, laying down upon a public road stone blocks for the purpose of facilitating the carriage of goods to and from a terminus separated from a wharf belonging to the company, and situated on the other side of a road, the Court holds that its interference is justified, although no injury to the road itself or to the passengers passing along it, has been caused: (*London and Brighton Railway Co. v. Cooper*, 2 R. C. 312; but see *Attorney-General v. Eastern Counties Railway Co.*, 3 R. C. 337.)

Right of public to road interfered with.

In a case in which it was doubtful whether or not a public right of way had been extinguished by disuse, a motion for an injunction to restrain the railway company from stopping up the way was ordered to stand until the hearing, the defendants undertaking to construct a proper roadway if the plaintiff established his right: (*Freeman v. Tottenham, &c., Railway Co.*, 13 W. R. 335, 1004.)

Disobedience to order of Court by change of plan as to road.

Where an injunction to restrain a nuisance caused by the obstruction of a public road and a substituted road ordered to be made, had been granted, the company were not allowed to depart from their plan by crossing the road on a level instead of lowering it so as to make their line pass over it, and the Court refused to permit such disobedience to its order, and directed a sequestration, the execution of which was only stayed upon the undertaking of the company to obey the order and to pay all the costs of the proceedings: (*Attorney-General v. Great Northern Railway Co.*, 4 De G. & Sm. 75.)

Inquiries directed by Court as to extension of diversion.

The company will be kept within their act, and will not be allowed to construct their works in such a way as to cause inconvenience by the diversion of roads rendered necessary by a departure from their authorised plans. In such cases the Court of Chancery will direct inquiries as to what extent of diversion may be expedient in the interest of the public and the company: (*Attorney-General v. Dorset Central Railway Co.*, 3 L. T. N. S. 608.)

Diversion after award made.

But an award regulating the mode in which certain approaches to a turnpike road are to be made, will not prevent the company from exercising their general constructing powers in order to divert the road within the limits of deviation, but not within the limits fixed by the award: (*Wood v. North Staffordshire Railway Co.*, 1

M'N. & G. 278; *Selby v. Colne Valley, &c., Railway Co.*, 6 L. T. N. S. 8 & 9 VICT. c. 20. 709; 10 W. R. 661.)

A temporary as well as a permanent diversion of roads is within the general powers of a railway company: (*Phillipps v. London, Brighton, and South Coast Railway Co.*, 4 Giff. 46; 9 Jur. N. S. 348.)

In a late case before the Lord Chancellor, a lessor who had power to divert a road in case he made certain other alterations was held by his Lordship to be entitled to make such alterations and diversion, although he might have made the alterations for the purpose of giving himself the right to divert the road; but the distinction was carefully drawn between such a case and the case of a railway company acting under an act of Parliament. It would seem, however, that in the case of the lease, as in the case under an act of Parliament, if no irreparable injury had been done even by an unauthorised diversion, the plaintiff would have been left to his remedy at law: (*Butt v. Imperial Gas Co.*, 2 L. R. (Ch. App.) 158; 15 W. R. 92; 16 L. T. N. S. 820. And see *Lloyd v. London, Chatham, and Dover Railway Co.*, 34 L. J. (Ch.) 401; 11 Jur. N. S. 380; *Attorney-General v. Ely, Haddenham, and Sutton Railway Co.*, L. R. 6 Eq. 106; 16 W. R. 834.)

Unauthorised diversion: remedy at law.

Irreparable injury.

The company has the option of carrying road over railway or railway over road, and under s. 16 may alter such works after having once exercised the option: (*South-Eastern Railway Co. v. R.*, 17 Q. B. 485; 20 L. J. (Q. B.) 428; 4 H. L. 471; 17 Jur. 901.)

Option as to mode of crossing roads.

And a writ of mandamus commanding the company to carry the road in one way which does not state a sufficient reason for the option no longer existing, is bad; and, according to the opinion of the judges delivered to the House of Lords, even an express admission in the return of a fact necessary to make the writ valid will not supply the defect: (*Ibid.*)

The provisions of this section must be strictly complied with, unless the special act expressly authorises a departure from them: (See *Reg. v. Wycombe Railway Co.*, L. R. 2 Q. B. 320, 325; notes to s. 16, *ante*, p. 337.)

Section to be strictly complied with.

(b) If the road is carried over the railway the company must keep in repair not only the bridge, but the roadway over the bridge and the approaches thereto, and this includes the metalling of the road on the bridge and approaches: (*North Staffordshire Railway Co. v. Dale*, 8 E. & B. 836; 27 L. J. (M. C.) 147; *Leech v. North Staffordshire Railway Co.*, 29 L. J. (M. C.) 151.)

Obligation to keep road crossing line in repair.

But if the railway is carried over the road by means of a bridge, the company is not bound to keep the road in repair: (*Waterford and Limerick Railway Co. v. Kearney*, 12 Ir. C. L. Rep. 224; *Fosberry v. Waterford and Limerick Railway Co.*, 13 Ir. C. L. Rep. 494; *London and North-Western Railway Co. v. Surveyor of highways for township of Skerton*, 33 L. J. (M. C.) 158.)

Secus, if railway carried over road by a bridge.

A special act having directed that a certain arch should have a specified height, the railway company were held to be entitled to sink the road beneath it, so as to procure that height, although the road trustees had given a modified assent to the act on condition that the road should not be interfered with, and although occasional floods might happen in consequence of the lowering of the

Sinking road to obtain sufficient height for arch.

Effect of assent to act by road trustees.

8 & 9 VICT. c. 23. road : (*Aldred v. North Midland Railway Co.*, 1 R. C. 404 ; and see *Edwards v. Grand Junction Railway Co.*, 7 Sim. 342 ; 1 R. C. 173.)

Where opposition to bill not withdrawn.

And if the landowners do not withdraw their opposition, they cannot afterwards prevent a railway company from exercising all their powers under their act, since no contract for limiting those powers has been created between the parties : (*Eton College v. Great Western Railway Co.*, 1 R. C. 200.)

(c) See ss. 59-62, *post*.

See as to notice of intention to apply to the justices, s. 59 *post*.

Construction of power to cross road on a level.

(d) A provision contained in a special act, authorising the crossing of a road on a level upon condition that a foot-bridge should also be constructed, was held to be permissive only, and an injunction to restrain the company from carrying the road over the railway by means of a bridge was refused : (*Warden, &c., of Dover v. London, Chatham, and Dover Railway Co.*, 30 L. J. (Ch.) 474 ; *Breynton v. London and North-Western Railway Co.*, 10 Bea. 238 ; 11 Jur. 28 ; 4 R. C. 553 ; *Beardmer v. London and North-Western Railway Co.*, 1 M'N. & G. 112 ; 1 H. & T. 161 ; 13 Jur. 327 ; 18 L. J. (Ch.) 432.)

Provision in cases where roads are crossed on a level.

XLVII. If the railway cross any turnpike road or public carriage road on a level (a), the company shall erect and at all times maintain good and sufficient gates across such road, on each side of the railway where the same shall communicate therewith, and shall employ proper persons to open and shut such gates ; and such gates shall be kept constantly closed across such road on both sides of the railway except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross such railway (b) ; and such gates shall be of such dimensions and so constructed as when closed to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway ; and the person intrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts, or carriages shall have passed through the same, under a penalty of forty shillings for every default therein : Provided always, that it shall be lawful for the Board of Trade, in any case in which they are satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road should be kept closed across the railway to order that such gates shall be kept so closed, instead of across the road, and in such case such gates shall be kept constantly closed across the railway, except when engines or carriages passing along the railway shall have occasion to cross such road, in the same manner and under the like penalty as

Cattle straying through gates—Liability of Company. 361

above directed with respect to the gates being kept closed ^{8 & 9 VICT. c. 20.} across the road.

(a) New provisions with respect to level crossings have been enacted by the Railways Clauses Act, 1863, (26 & 27 Vict. c. 92,) ss. 5-8, inclusive, for preventing the shunting of trains over such crossings; for the erection of lodges at the point of crossing; for the regulation of the speed of trains passing such points; for enabling the Board of Trade to require bridges instead of level crossings; and for authorising the taking of additional land for the purposes of the works so required to be erected: (See the act, *post*; and *Warden, &c., of Dover v. London, Chatham, and Dover Railway Co.*, 30 L. J. (Ch.) 474; *Breynton v. London and North-Western Railway Co.*, 10 Bea. 238; 11 Jur. 28; 4 R. C. 553; *Beardmer v. London and North-Western Railway Co.*, 1 M.N. & G. 112; 1 H. & T. 161; 13 Jur. 327; 18 L. J. (Ch.) 332.)

Level crossings:
Railways Clauses
Act, 1863, ss.
5-8.

(b) The effect of this section is to make the road a highway only when the gates are opened by one of the company's servants. Therefore if, there being no servant there, a passenger, after waiting a reasonable time, opens the gates and attempts to pass through with his horse and carriage, and damage ensues to him from the gates swinging to, he is committing an illegal act, and the company are not liable for the damage: (*Wyatt v. Great Western Railway Co.*, (disse-
tiente Blackburn, J.,) 11 Jur. N. S. 825; 34 L. J. (Q. B.) 204.)

How far railway
is a highway.

Where horses strayed from a field into the highway and through the gates, which were open, on to the railway, where they were killed by a train, it was held that a provision similar to that of the present section imposed on the company an obligation to keep the gates closed against such stray cattle on the road, as well as against cattle travelling thereon, and that the company were liable for the value of the horses to their owner: (*Fawcett v. York, &c., Railway Co.*, 16 Q. B. 610. See and distinguish *Manchester, &c., Railway Co. v. Wallis*, 14 C. B. 213; 23 L. J. (C. P.) 85.)

Cattle straying
through gates.

Although this section simply orders the company to maintain gates across the road, and employ proper persons to open and shut the gates and keep them closed, except when horses, carriages, &c., have to cross, yet there is implied in these words a direction to the company to keep persons from passing through such gates except when it is reasonably safe to do so: (*Lunt v. London and North-Western Railway Co.*, L. R. 1 Q. B. 277; 35 L. J. (Q. B.) 105; 12 Jur. N. S. 409; 14 W. R. 497; 14 L. T. N. S. 225.)

Duty of com-
pany to keep
persons from
crossing except
when reasonably
safe to do so.

Where therefore a public way passed obliquely over a railroad, and the company placed gates on either side of the line as directed by this section, there being opposite to one of the gates, and abutting on the rails, a yard, from which there was a private way over the rails, with but one outlet by means of the gate opposite, and the plaintiff's carter, having finished his work in the yard, drove his cart after dark to the entrance to the railroad, and called to the company's keeper at the opposite gate to know if the road were clear, to which the keeper replied, "Yes, come on," whereupon the carter proceeded, and the horse and cart were struck by a passing train, it was held that whatever might have been the case had the carter been

8 & 9 Vict. c. 20. using an ordinary private road over the railway, the fact that the only outlet to this road was by means of the public gate, placed him in the same position as if he had been using the public way; that the answer of the gatekeeper was equivalent to an invitation to come upon the railroad, and that this was a breach of his duty in the service of the company for which they were responsible: (*Ibid.*)

Liability of company in case of accidents to foot-passengers crossing line.

And where a railway crossed a carriage road on a level, and there were locked carriage gates and swing gates for foot passengers, the crossing being on a curve, the view being obstructed in that direction by a bridge near it over the line, and the trains being frequent, petitioner in crossing was knocked down by one of two trains which passed about the same time, whilst his attention was directed to the other, it was held by the Court of Common Pleas that, although there might be no statutory provisions for the safety of such a foot passenger, yet, under the circumstances, there was evidence of negligence to go to the jury, and the judge was not bound to nonsuit. "I do not intend," said Erle, C. J., "to lay down a rule as to footpaths elsewhere, or to interfere with the statute law. The ground of my decision is the great degree of risk in this place. There were many trains; it was on a curve and near a bridge; the noises of the different trains would interfere with each other, and the bridge would obstruct the sight; and I am, therefore, unable to say that the judge was bound to nonsuit:" (*Bilbee v. London, Brighton, and South Coast Railway Co.*, 18 C. B. N. S. 584; 34 L. J. (C. P.) 182; 13 W. R. 779.)

Stabley v. London and North-Western Railway Co.

This case must, however, be regarded as decided with reference to its own peculiar circumstances, and not as laying down any general principle: (See the remarks of the Court in *Stabley v. London and North-Western Railway Co.*, L. R. 1 Ex. 13; 4 H. & C. 83; 11 Jur. N. S. 954; 14 W. R. 133; 13 L. T. N. S. 376; 35 L. J. (Exch.) 5, 6.) Thus, where a railway crossed a footpath on the level close to a station, a swing-gate being erected by the company some few yards from the line for foot passengers, from which gate the view of the line was very confined, but at the point at which a passenger, after passing the gate, would step on to the line there was a clear view of three hundred yards in each direction, and caution-boards were erected near the crossing, the trains being frequent, and a woman, stepping on to the line immediately after a train had passed in one direction, was killed by another train coming in the opposite direction, it was held that there was nothing in the circumstances to show that the railway company were guilty of negligence in not stationing a watchman at the crossing to warn people, or in not taking any other special precaution, and that, therefore, the company were not liable in an action brought by the husband of the deceased: (*Ibid.*)

In giving judgment, Bramwell, B., remarks with reference to the previous case referred to:—"I do not treat *Bilbee v. London and Brighton Railway Co.* as an authority. I do not mean that it was not rightly decided; but it establishes no precedent, and lays down no principle. The learned Lord Chief Justice there seems to have intended to guard against its being cited as an authority. One can readily understand that if a railway is made with a curve so abrupt that a person cannot see the approach of a train, or if there be a

tunnel in a curve so that one could not see through the tunnel, in s 8 & 9 VICT. c. 20. such a case a passenger might say, 'No care on my part would warn me of the danger.' He must stop there for ever unless there is somebody to tell him. That is all the case of *Bilbee v. The London and Brighton Railway Co.* seems to have decided."

Bilbee v. London, Brighton, and South Coast Railway Co. was followed by the Court of Exchequer in the case of *Stapley v. London, Brighton, and South Coast Railway Co.*, (L. R. 1 Ex. 21; 4 H. & C. 93; 11 Jur. N. S. 945; 13 L. T. N. S. 406; 14 W. R. 133; 35 L. J. (Ex.) 7,) of which the facts are as follow:—The defendants' railway crossed a highway on a level close to a station. On each side of the railway were gates across the carriage-way, and swing-gates or turnstiles for foot passengers. By the defendants' rules and regulations the gates were always to be kept closed across the carriage-way, except when opened to allow carriages to cross, and they were never to be opened until the gateman had satisfied himself that no train was due or in sight. A foot passenger crossing the railway was killed by an express train, which passed through the station without stopping. There was no servant of the defendants at the gate or on the platform of the station. The carriage gate on the side from which the deceased came was seen after the accident to be partly open. It had been seen shut half an hour previously, and there was no evidence of how it came to be open, or whether the deceased came through the carriage gate or through the turnstile. The train was four minutes overdue. There was a curve in the line at the spot, and the train would not be visible to a person standing at the gate till it came within six hundred yards. The deceased was deaf, was in the habit of coming to the station, and knew the times of the trains. It was held in an action brought by the executors of the deceased that a foot passenger, who found the carriage gate open, would be led to believe that no train was due, and that upon the whole case there was some evidence of negligence to be left to the jury. And Channell, B., in delivering the judgment of the Court, observed, "The principle on which we desire to act is that laid down in *Bilbee v. London, Brighton, and South Coast Railway Co.*, that although it is the duty of the Court not to impose on railway companies burthens larger than the Legislature intended them to bear, and they may not be bound to place men at every gate along the line, yet it may be a duty incumbent on them to do so where there is an immense amount of traffic, or where there are other circumstances which require it."

XLVIII. Where the railway crosses any turnpike road on a level adjoining to a station, all trains on the railway shall be made to slacken their speed before arriving at such turnpike road, and shall not cross the same at any greater rate of speed than four miles an hour; and the company shall be subject to all such rules and regulations with regard to such crossings as may from time to time be made by the Board of Trade.

As to crossing of turnpike roads adjoining stations.

8 & 9 Vict. c. 20.

Construction of
bridges over
roads.

XLIX. Every bridge to be erected for the purpose of carrying the railway over any road shall (except where otherwise provided by the special act) (a) be built in conformity with the following regulations; (that is to say.)

The width of the arch shall be such as to leave thereunder a clear space of not less than thirty-five feet if the arch be over a turnpike road (b), and of twenty-five feet if over a public carriage road, and of twelve feet if over a private road (c):

The clear height of the arch from the surface of the road shall not be less than sixteen feet for a space of twelve feet if the arch be over a turnpike road, and fifteen feet for a space of ten feet if over a public carriage road; and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet:

The clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private carriage road:

The descent made in the road in order to carry the same under the bridge (d) shall not be more than one foot in thirty feet if the bridge be over a turnpike road, one foot in twenty feet if over a public carriage road, and one foot in sixteen feet if over a private carriage road, not being a tramroad or railroad, or if the same be a tramroad or railroad the descent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed the same shall not be greater than as it existed at the passing of the special act.

Effect of special
directions as to
bridges in special
act.

(a) This section is intended to impose restrictions upon the company as to the mode of building bridges, so far as the mode of building them is not defined by any special directions either in the special act or in the earlier provisions of the Railways Clauses Act, 1845, and has not the effect of removing any restrictions imposed by any such special directions: (*Attorney-General v. Teckesbury and Malvern Railway Co.*, 1 De G. J. & Sm. 423.)

Consequences of
not incorporating
this section in
contracts with
landowners.

In an agreement between a railway company and a landowner concerning a bridge crossing a street, this section should be incorporated in order to obtain the benefit of the statutory length of twenty-five feet; if this be not done the company will have to make the bridge of the full width of the street: (*Clarke v. Manchester, &c., Railway Co.*, 1 J. & H. 631.)

What is a "turn-
pike road" within
this section.

(b) A turnpike road within the meaning of this section is one on which toll gates are by law erected and tolls taken thereat: (*Northam Bridge, &c., Co. v. London and Southampton Railway Co.*, 6

M. & W. 428; 1 R. C. 653.) But a street in a town, no matter how important or how great its traffic, which is not maintained by tolls paid by passengers, is not within the provisions of this section: (*Reg. v. East and West India Docks, &c., Railway Co.*, 2 E. & Bl. 466; 22 L. J. (Q. B.) 380.)

Street not a turnpike road.

(c) Footpaths are not to be taken as part of the turnpike road over which the arch of the bridge is to be thrown: (*Reg. v. Rigby*, 14 Q. B. 687; 19 L. J. (Q. B.) 153; 6 R. C. 479.) "There is no pretence for saying that they can be taken into account in ascertaining the average available width of the road for the passage of carriages:" (*Per Patteson, J., Ibid.*)

Footpaths not to be taken as part of turnpike road.

A railway company being empowered by their act to construct bridges over roads, and to erect piers and arches for that purpose, provided they left under each arch a span of fifteen feet, were not restrained from crossing a turnpike road by means of a bridge, the span of the arch of which was twenty-four feet, the original roadway having been forty feet wide. The Vice-Chancellor, however, in this case recommended that the opinion of a court of law should be taken: (*Attorney-General v. London and Southampton Railway Co.*, 1 R. C. 302.)

Obstruction of roads by piers for bridges.

(d) Certain road trustees having given a modified assent to the passing of the act, on condition that their road should not be interfered with, the company were held not to be prevented from sinking the road so as to obtain the requisite height for an arch, even although occasional floods were likely to occur in consequence of such sinking: (*Aldred v. North Midland Railway Co.*, 1 R. C. 404.)

Sinking road so as to obtain sufficient height for arch.

L. Every bridge (a) erected for carrying any road over the railway shall (except as otherwise provided by the special act) be built in conformity with the following regulations; (that is to say,)

Construction of bridges over railway.

There shall be a good and sufficient fence on each side of the bridge of not less height than four feet, and on each side of the immediate approaches (b) of such bridge of not less than three feet:

The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a turnpike road, and twenty-five feet if a public carriage road, and twelve feet if a private road:

The ascent (c) shall not be more than one foot in thirty feet if the road be a turnpike road (d), one foot in twenty feet if a public carriage road, and one foot in sixteen feet if a private carriage road, not being a tramroad or railroad, or if the same be a tramroad or railroad the ascent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed the same shall not be greater than as it existed at the passing of the special act.

(a) In constructing the approaches to a landowner's premises, the

Making new bridge instead of repairing old one.

s. & 9 VICT. c. 20. company proposed to pull down an old bridge, instead of adapting the old one for the purpose of such approaches, and in consequence it became necessary further to divert roads, and change the approaches, as directed by an award made with respect to them. No injunction was granted: (*Wood v. North Staffordshire Railway Co.*, 1 M.N. & G. 278.)

Temporary bridges.

"Present inclination" of approaches.

As to the power of the company to erect temporary bridges for the purpose of transporting materials, or of constructing a permanent bridge by its side, see the notes to s. 16, *ante*, p. 334.

(b) Where a special act provided that in carrying a road over a railway, the ascent to the bridge should not be more than one foot in thirty, except where the "present inclination" should be steeper, and then that the gradient should not be steeper than such "present inclination," it was decided "that when the Legislature spoke of the 'present' inclination of the turnpike road, they meant the inclination of the road, as it might exist at the time of taking the road." The restriction was also held to apply to a substituted or diverted road, as well as to a previously existing one: (*Attorney-General v. London and Southampton Railway Co.*, 1 R. C. 283.)

(c) The provisions of the act as to the rate of the ascent of a road, &c., are not controlled by the proviso as to damages contained in s. 16, *ante*, p. 340: (*Reg. v. East and West India Docks, &c., Railway Co.*, 2 E. & B. 466; 22 L. J. (Q. B.) 380.)

(d) As to what is a "turnpike road," see notes to preceding section.

The width of the bridges need not exceed the width of the road in certain cases.

LI. Provided always, That in all cases where the average available width for the passage of carriages of any existing roads within fifty yards of the points of crossing the same is less than the width hereinbefore prescribed for bridges over or under the railway, the width of such bridges need not be greater than such average available width of such roads, but so nevertheless that such bridges be not of less width, in the case of a turnpike road or public carriage road than twenty feet: Provided also, that if at any time after the construction of the railway the average available width of any such road shall be increased beyond the width of such bridge on either side thereof, the company shall be bound, at their own expense, to increase the width of the said bridge to such extent as they may be required by the trustees or surveyors of such road, not exceeding the width of such road as so widened, or the maximum width (a) herein or in the special act prescribed for a bridge in the like case over or under the railway.

(a) In *Reg. v. Rigby*, (14 Q. B. 687; 19 L. J. (Q. B.) 153,) Patteson, J., thus sums up the provisions of this section and s. 49:—"Much discussion took place on the argument as to the word 'maximum,' but the meaning of the Legislature is very plain. Where the average

available width for the passage of carriages on any road exceeds 8 & 9 Vict. c. 20. thirty-five feet, it may be narrowed to thirty-five feet under the arch, for the arch is only required to be of that width; where it is less, the arch may be of the same width as the road, so as it be not less than twenty feet; and if the road be afterwards widened, the arch must be proportionably widened up to, but not beyond, thirty-five feet."

LII. Provided also, That if the mesne inclination of any road within two hundred and fifty yards of the point of crossing the same, or the inclination of such portion of any road as may require to be altered, or for which another road shall be substituted, shall be steeper than the inclination hereinbefore required to be preserved by the company, then the company may carry any such road over or under the railway, or may construct such altered or substituted road at an inclination not steeper than the said mesne inclination of the road so to be crossed, or of the road so requiring to be altered, or for which another road shall be substituted.

Existing inclinations of roads crossed or diverted need not be improved.

LIII. If, in the exercise of the powers by this (a) or the special act granted, it be found necessary to cross, cut through, raise, sink, or use any part of any road, whether carriage road, horse road, tramroad, or railway, either public or private, so as to render it impassable for or dangerous or extraordinarily inconvenient to passengers or carriages, or to the persons entitled to the use thereof, the company shall, before the commencement of any such operations, cause a sufficient road to be made instead of the road to be interfered with, and shall at their own expense maintain such substituted road (b) in a state as convenient for passengers and carriages as the road so interfered with, or as nearly so as may be.

Before roads interfered with, others to be substituted.

(a) Previously to the passing of this act, a company which, being by a special act authorised to substitute a road, had obstructed the old road without providing another, was held liable at common law to an indictment for a nuisance: (*R. v. Scott*, 3 Q. B. 543.) But this does not seem to apply to cases within the Consolidation Act, a provision being made in ss. 54 and 55 for such a case: (See *Watkins v. Great Northern Railway Co.*, 16 Q. B. 961; 20 L. J. (Q. B.) 391.)

Indictment where road not substituted.

By force of the present section and s. 6, *ante*, p. 319, the remedy by action for obstructing a private right of way is taken away unless the petitioner has sustained special damage: (*Ibid.* See *Hadfield v. Manchester, &c., Railway Co.*, 12 Jur. 1083.)

No action except in case of special damage.

8 & 9 VICT. c. 20. These sections do not apply where the object of the special act is to change the nature of the road: (*Tanner v. South Wales Railway Co.*, 5 E. & B. 618.)

Form of injunction under this section.

(b) An injunction was granted under this section to restrain a railway company "from crossing, breaking up, cutting through, or in anywise interfering with the turnpike road, or the communication thereof, or the traffic thereon, until they should have caused to be made and appropriated for the use of the public a sufficient road over the railway, as convenient for passengers and carriages as the then turnpike road, or as near thereto as might be, or until further order; without prejudice to any application by either party to the Railway Commissioners under the Act; with liberty to apply:" (*Attorney-General v. London and South-Western Railway Co.*, 3 De G. & Sm. 439; 7 R. C. 624.)

Former practice where roads interfered with.

In the early cases under special railway acts, where the question of right was doubtful, the Court of Chancery interfered to prevent railway companies from stopping up or interfering with roads, only by putting the parties in a position to try the legal right claimed by the plaintiff, and directed a trial with respect thereto, or to decide the question whether the substituted road proposed to be made was a proper one under the act: (*Kemp v. London and Brighton Railway Co.*, 1 R. C. 495.) With regard to the present practice in such cases, see *Freeman v. Tottenham, &c., Railway Co.*, 11 Jur. N. S. 107, 254; 13 W. R. 335, 1004; 11 L. T. N. S. 702; 25 & 26 Vict. c. 42, (Rolt's Act.); and *ante*, p. 358. And see *Rigby v. Great Western Railway Co.*, 2 Ph. 44.

Present practice.

Information by Attorney-General.

When special injury is inflicted on private persons by interference with roads by railway companies, even where the roads are public ones, the intervention of the Attorney-General is not necessary: (*Spencer v. London and Birmingham Railway Co.*, 1 R. C. 159; but see *Hadfield v. Manchester, South Junction, and Altringham Railway Co.*, 12 Jur. 1083.)

Doubtful right of way.

But a public injury not peculiar to individuals can be relieved only by means of an information by the Attorney-General: (See *Ware v. Regent's Canal Co.*, 3 De G. & J. 212; 23 Bea. 575.)

Where it was doubtful whether or not a public right of way had been extinguished by disuse, a motion for an injunction was, on appeal, ordered to stand to the hearing, with leave to the plaintiff to try his right at law, the defendants undertaking to allow a free passage in the meantime in case the decision should be in the plaintiff's favour: (*Freeman v. Tottenham, &c., Railway Co.*, 13 W. R. 335, 1004; 11 Jur. N. S. 107, 254; 11 L. T. N. S. 702.)

Note on plan that road is to be stopped up does not bind public.

The public will not be barred by mere delay on account of a note on the deposited plans that a certain road was to be stopped up, such note not being considered as notice to them: (*Attorney-General v. Great Northern Railway Co.*, 4 De G. & Sm. 75.)

Change of plan in order to avoid effect of injunction.

A change of plan whereby a road would be crossed on a level instead of being lowered, is a disobedience to an order of Court directing a substituted road to be made, and sequestration in such a case was ordered, and only stayed upon the undertaking of the company to do what had been decreed: (*Attorney-General v. Great Northern Railway Co.*, 4 De G. & Sm. 75.)

Remedy by injunction or mandamus.

It is necessary, however, that an injunction or a mandamus

should be applied for in case the company do not conform to the provisions of the statute, and it is not competent for the district surveyors, after having refused a permanent diverted road tendered by the company, to obstruct a temporary diverted road made by the latter: (*London and Brighton Railway Co. v. Blake*, 2 R. C. 322.)

Where a clear infringement of the provisions of a special act requiring roads to be substituted for others interfered with, had been committed, the Court held the plaintiff entitled to as complete a remedy as possible, but withheld the injunction for a short time, with his consent, on the ground that the former road could be restored sooner by allowing the company to proceed with their works, than by ordering them not to cut the road further, and to restore it immediately to its former state: (*Spencer v. London and Birmingham Railway Co.*, 1 R. C. 159.)

And where a company had diverted a road *ultra vires*, instead of taking it across the railway by a level crossing, or by a bridge or a tunnel, as it appeared that what they had done, was done with a *bona fide* view to the convenience of the public, it was held that as greater inconvenience would arise by resorting to other means, no injunction would be granted, but that the Attorney-General ought not to be prevented from seeking a proper remedy at law: (*Attorney-General v. Ely, Haddenham, and Sutton Railway Co.*, L. R. 6 Eq. 106; 16 W. R. 834.)

A provision in a special act that a substituted road should be made where a road should be found necessary to be cut through, diverted, raised, sunk, taken, or so much injured as to be impassable, was held to apply to a temporary or permanent diversion of the road, and not to a mere obstruction of it in consequence of a bridge, built with piers, passing over it: (*Attorney-General v. London and Southampton Railway Co.*, 1 R. C. 302.)

The substituted road under this section must be as convenient as the road interfered with; and it is not a satisfaction of the requirements of the section to allege upon the face of the deposited plan, that there is an existing road which is as convenient as any substituted road could be: (*Attorney-General v. Great Northern Railway Co.*, 4 De G. & Sm. 75; and see *Bell v. Hull and Selby Railway Co.*, 1 R. C. 616.)

With respect to the right of property in the old road, when a new one is substituted, (see *Marquis of Salisbury v. Great Northern Railway Co.*, 5 C. B. N. S. 174; 28 L. J. (C. P.) 40, ante, p. 338.

LIV. If the company do not cause another sufficient road to be so made before they interfere with any such existing road as aforesaid, they shall forfeit twenty pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted; and such penalty shall be paid to the trustees, commissioners, surveyor, or other person having the management of such road (a), if a public road, and shall be applied for the purposes thereof, or in case of a private road the same shall be paid to the owner thereof (b), and every

370 *Railways Clauses Consolidation Act, 1845, ss. 55, 56.*

s & 9 VICT. c. 20. such penalty shall be recoverable with costs by action in any of the Superior Courts.

(a) See *Reg. v. Wilson*, 18 Q. B. 348; 21 L. J. (Q. B.) 281, in notes to sec. 57, *post*, p. 371.

"Owner."

(b) The tenant of the farm over which the road passes, is not an "owner" within this section: (*Collinson v. Newcastle, &c., Railway Co.*, 1 C. & Kir. 546; see *Mann v. Great Southern and Western Railway Co.*, 9 Ir. C. L. Rep. 105.)

Party suffering damage from interruption of road to recover in an action on the case.

LV. If any party entitled to a right of way over any road so interfered with by the company shall suffer any special damage by reason that the company shall fail to cause another sufficient road to be made before they interfere with the existing road, it shall be lawful for such party to recover the amount of such special damage from the company, with costs, by action on the case in any of the Superior Courts, and that whether any party shall have sued for such penalty as aforesaid or not, and without prejudice to the right of any party to sue for the same.

See the notes to s. 53, *ante*, p. 367.

Period for restoration of roads interfered with.

LVI. If the road so interfered with can be restored compatibly with the formation and use of the railway, the same shall be restored to as good a condition as the same was in at the time when the same was first interfered with by the company, or as near thereto as may be; and if such road cannot be restored compatibly with the formation and use of the railway, the company shall cause the new or substituted road, or some other sufficient substituted road, to be put into a permanently substantial condition, equally convenient as the former road, or as near thereto as circumstances will allow (a); and the former road shall be restored, or the substituted road put into such condition as aforesaid, as the case may be, within the following periods after the first operation on the former road shall have been commenced, unless the trustees or parties having the management of the road to be restored by writing under their hands consent to an extension of the period, and in such case within such extended period, (that is to say,) if the road be a turnpike road, within six months, and if the road be not a turnpike road, within twelve months.

Obligation to maintain roads in repair.

(a) This does not affect the obligation imposed on railway companies by sec. 46, (*ante*, p. 357,) of perpetually maintaining in repair

the roadway over a bridge, made for carrying a turnpike road or 8 & 9 VICT. c. 20. public highway over or under the railway: (*North Staffordshire Railway Co. v. Dale*, 8 E. & Bl. 836; 27 L. J. (M. C.) 147.)

In a case where the special act contained a provision similar to this, it was held to be no sufficient return to a mandamus, ordering the company who had cut through a turnpike road, forty feet wide, and made thereon a bridge, carrying it over the railway, (the bridge and approaches being only thirty feet wide,) to restore the road, that the approaches, though of a less width, were as convenient to the public as they could be made in execution of the powers of the act, and as convenient to the public, as the original road had been; or that the company could not now widen the approaches, without taking and purchasing more land; that their compulsory powers of purchasing under the act had expired before they were called on to widen, and that they had not then, nor have since had, the power to take or purchase land for such purpose: (*R. v. Birmingham and Gloucester Railway Co.*, 2 Q. B. 47; 2 R. C. 694.)

What is a sufficient restoration of roads.

The cases with respect to the obligation of the company to substitute for a road interfered with, another road "equally convenient" with the former road, will be found in the notes to s. 53, *ante*, p. 367, *et seq.*; and see particularly *Attorney-General v. London and South-Western Railway Co.*, 3 De G. & Sm. 439; *Attorney-General v. Great Northern Railway Co.*, 4 De G. & Sm. 75, there cited.

LVII. If any such road be not so restored, or the substituted road so completed as aforesaid, within the periods herein or in the special act fixed for that purpose, the company shall forfeit to the trustees, commissioners, surveyor, or other person having the management (a) of the road interfered with by the company, if a public road, or if a private road, to the owner thereof, five pounds for every day after the expiration of such periods respectively during which such road shall not be so restored or the substituted road completed (b), and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be laid out in executing the work in respect whereof such penalty was incurred.

Penalty for failing to restore road.

(a) The owner of the soil of a road who constructed the road and a sewer beneath it, dedicated it to the public, and repaired it at his own expense, is not a "person having the management of the road," within the meaning of this section: (*Reg. v. Wilson*, 18 Q. B. 348; 21 L. J. (Q. B.) 281.) He must be clothed with some duty in respect of the public *ejusdem generis* with that of "trustees, commissioners, or surveyor:" (*ibid.*)

Meaning of "other person" having the management of the road.

(b) Besides the penalties inflicted by this section which are, in the nature of cumulative remedies to hasten performance, (*per Lord Campbell, Caledonian Railway Co. v. Colt*, 3 Macq. 838;) there is also a remedy by mandamus for violation of the provisions of these sections: (*Reg. v. South-Eastern Railway Co.*, 4 H. L. C. 471.) A

Remedies by mandamus and indictment.

8 & 9 Vict. c. 20. company may also be indicted for not making the substituted road as nearly convenient as possible as the one stopped up : (*Reg. v. Scott*, 3 Q. B. 543 ; 3 R. C. 187 ; *Reg. v. Great North of England Railway Co.*, 9 Q. B. 315.)

Company to repair roads used by them.

LVIII. If in the course of making the railway the company shall use or interfere with any road (*a*), they shall from time to time make good all damage done by them to such road ; and if any question shall arise as to the damage done to any such road by the company, or as to the repair thereof by them, such question shall be referred to the determination of two justices ; and such justices may direct such repairs to be made in the state of such road, in respect of the damage done by the company, and within such period as they think reasonable, and may impose on the company for not carrying into effect such repairs, any penalty not exceeding five pounds *per day* as to such justices shall seem just (*b*) ; and such penalty shall be paid to the surveyor or other person having the management of the road interfered with by the company ; if a public road, and be applied for the purposes of such road, or if a private road, the same shall be paid to the owner thereof : Provided always, that in determining any such question with regard to a turnpike road the said justices shall have regard to, and shall make full allowance for, any tolls that may have been paid by the company on such road in the course of the using thereof.

What is an interference within this section.

(*a*) Where a railway company pulled down a county bridge and erected another, and at the same time agreed with the trustees of the turnpike road to keep in repair such portions of the approaches to the bridge as had previously been repaired by the county, the road being out of repair, it was held by Wightman, J., in refusing a mandamus to the company to repair the road, that this was not such an interference with the road as came within this section ; the trustees, if called on to repair the road, having their remedy on the agreement : (*Ex parte Exeter Road Trustees*, 16 Jur. 669.)

Order may include several roads in same parish.

(*b*) An order, as well as a conviction adjudging a penalty for disobedience to it, may include several roads situated in the same parish : (*London and North-Western Railway Co. v. Wetherall*, 20 L. J. (Q. B.) 337 ; 15 Jur. 247.)

Need not specify particulars of damage or repairs.

It is not necessary that the order made by the justices should specify the particulars of the damage done, or of the repairs to be made ; it is sufficient if it states the length of road injured, and orders the company to make good all damage done : (*Ibid.*)

Proceedings on application to justices to con-

LIX. When the company shall intend to apply for the consent of two justices, as hereinbefore provided (*a*), so as

to authorise them to carry the railway across any highway other than a public carriage-road on the level, they shall, fourteen days at least previous to the holding of the Petty Sessions at which such application is intended to be made, cause notice of such intended application to be given in some newspaper circulating in the county, and also to be affixed upon the door of the parish church of the parish in which such crossing is intended to be made, or if there be no such church, some other place to which notices are usually affixed; and if it appear to any two or more justices acting for the district in which such highway at the proposed crossing thereof is situate, and assembled in Petty Sessions, after such notice as aforesaid, that the railway can, consistently with a due regard to the public safety and convenience, be carried across such highway on the level, it shall be lawful for such justices to consent that the same may be so carried accordingly.

S & 9 VICT. c. 20.
sent to level
crossings of
bridleways and
footways.

(a) See s. 46, *ante*, p. 357, *et seq.*

LX. If either party shall feel aggrieved by the determination of such justices upon any such application as aforesaid, it shall be lawful for such party, in like manner, and subject to the like conditions as are hereinafter provided (a) in the case of appeals in respect of penalties and forfeitures, to appeal to the Quarter Sessions of the county or place in which the cause of appeal shall have arisen; and it shall be lawful for the justices in such Quarter Sessions, upon the hearing of such appeal, either to confirm or quash the determination, or to make such other order in regard to the method of carrying the railway across such highway as aforesaid, as to them shall seem fit, and to make such order concerning the costs both of the original application and of the appeal as to them shall seem reasonable.

Appeal against
the determina-
tion of the
justices.

(a) See s. 157, *post*.

LXI. If the railway shall cross any highway other than a public carriageway on the level, the company shall at their own expense make and at all times maintain convenient ascents and descents and other convenient approaches, with handrails or other fences, and shall, if such highway be a bridleway, erect and at all times maintain good and sufficient gates, and if the same shall be a foot-

Company to
make sufficient
approaches and
fences to bridle-
ways and foot-
ways crossing
on the level.

8 & 9 VICT. c. 28. way, good and sufficient gates or stiles, on each side of the railway where the highway shall communicate therewith (a).

Liability of company for accidents in consequence of cattle straying through open gates.

(a) In an action against a railway company whose line intersected the petitioner's land, for neglecting to provide proper gates and stiles for a public footway which ran across the railroad, in accordance with the present section, or for making their railroad so as not to carry it over or under a highway by means of a bridge, but across it on a level, (according to s. 46,) whereby the petitioner's cattle strayed on the line and were killed by the engines, it appeared that the way in question, whether a public footway or not, was also an occupation road, to which there would be properly such a gate as the company had erected, and which, under s. 75, the plaintiff was bound to keep fastened; and that they had fixed a lock on, and given him the key, which had been lost and the gate left unfastened by his servants. It was held by the Court of Exchequer that the Judge rightly directed the jury that the question as to the footway was immaterial; and that even assuming that there was a footway, and that the defendants would have neglected their duty in not providing a stile for passengers instead of a gate, had there not been an occupation road as well, the true question under the circumstances was, whether the accident had arisen through the substitution of the gate for the stile, or partly through the negligence of the petitioner's servants: (*Ellis v. London and South-Western Railway Co.*, 2 H. & N. 424; 26 L. J. (Ex.) 349.)

Gates across ancient footway not to be broken down.

Omission to fasten swing-gate.

Foot-passengers have no right to break down or break open a gate erected under authority of an act of Parliament, assuming it to be erected across an ancient footway: (*Per Pollock, C.B., ibid.*)

Where a good and sufficient swing-gate was erected, as required by this section, which the railway company, by way of extra precaution usually, but not invariably, fastened when a train was approaching, it was held that a person who, finding it unfastened, proceeded, without looking up or down the line, to cross the railway and was killed by a passing train, had contributed to the accident by his own negligence, and that the company were not liable in an action brought by the administratrix of the deceased: (*Skelton v. London and North-Western Railway Co.*, L. R. 2 C. P. 631; 36 L. J. C. P. 249.) It was the opinion of Willes, J., that the mere failure to perform a self-imposed duty is not actionable negligence; that the omission to fasten the gate did not amount to an invitation to the deceased to come on the line, and that, therefore, even if he were not guilty of contributory negligence, the company were not liable: (*Ibid.*) See the cases cited, *ante*, pp. 361-363.

Justices to have power to order approaches and fences to be made to highways crossing on the level.

LXII. If, where the railway shall cross any highway on the level, the company fail to make convenient ascents and descents or other convenient approaches, and such hand-rails, fence, gates, and stiles as they are hereinbefore required to make, it shall be lawful for two justices, on the application of the surveyor of roads, or of any two house-

holders within the parish or district where such crossing shall be situate, after not less than ten days' notice to the company, to order the company to make such ascent and descent or other approach, or such handrails, fences, gates, or stiles as aforesaid, within a period to be limited for that purpose by such justices; and if the company fail to comply with such order they shall forfeit five pounds for every day that they fail so to do; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be applied, in such manner and by such person as they think fit, in executing the work in respect whereof such penalty was incurred.

8 & 9 VICT. c. 20.

SCREENS FOR TURNPIKE ROADS.

LXIII. If the commissioners or trustees of any turnpike road, or the surveyor of any highway, apprehend danger to the passengers on such road in consequence of horses being frightened by the sight of the engines or carriages travelling upon the railway, it shall be lawful for such commissioners, or trustees, or surveyor, after giving fourteen days' notice to the company, to apply to the Board of Trade with respect thereto; and if it shall appear to the said Board that such danger might be obviated or lessened by the construction of any works in the nature of a screen near to or adjoining the side of such road, it shall be lawful for them, if they shall think fit, to certify the works necessary or proper to be executed by the company for the purpose of obviating or lessening such danger, and by such certificate to require the company to execute such works within a certain time after the service of such certificate, to be appointed by the said Board.

Screens for turnpike roads.

Screen for roads to be made, if required by the Board of Trade.

LXIV. Where by any such certificate as aforesaid the company shall have been required to execute any such work in the nature of a screen, they shall execute and complete the same within the period appointed for that purpose in such certificate; and if they fail so to do, they shall forfeit to the said commissioners, or trustees, or surveyor, five pounds for every day during which such works shall remain uncompleted beyond the period so appointed for their completion; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or

Penalty for failing to construct.

8 & 9 VICT. C. 20. any part thereof to be laid out in executing the work in respect whereof such penalty was incurred.

CONSTRUCTION OF BRIDGES.

Construction of bridges.

Justices to have power to order repair of bridges, &c.

LXV. Where, under the provisions of this or the special act, or any act incorporated therewith, the company are required to maintain or keep in repair any bridge, fence, approach, gate, or other work executed by them, it shall be lawful for two justices, on the application of the surveyor of roads, or of any two householders of the parish or district where such work may be situate, complaining that any such work is out of repair, after not less than ten days' notice to the company, to order the company to put such work into complete repair within a period to be limited for that purpose by such justices; and if the company fail to comply with such order, they shall forfeit five pounds for every day that they fail so to do; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be applied, in such manner and by such persons as they think fit, in putting such work into repair.

Board of Trade empowered to modify the construction of certain roads, bridges, &c., where a strict compliance with the act is impossible or inconvenient.

LXVI. And whereas expense might frequently be avoided, and public convenience promoted, by a reference to the Board of Trade (a) upon the construction of public works of an engineering nature connected with the railway, where a strict compliance with the provisions of this or the special act might be impossible, or attended with inconvenience to the company, and without adequate advantage to the public; be it enacted, That in case any difference in regard to the construction, alteration, or restoration of any road or bridge, or other public work of an engineering nature, required by the provisions of this or the special act, shall arise between the company and any trustees, commissioners, surveyors, or other persons having the control of or being authorised by law to enforce the construction of such road, bridge, or work, it shall be lawful for either party, after giving fourteen days' notice in writing of their intention so to do to the other party, to apply to the Board of Trade to decide upon the proper manner of constructing, altering, or restoring such road, bridge, or other work; and it shall be lawful for the Board of Trade,

if they shall think fit, to decide the same accordingly, and to authorise, by certificate in writing, any arrangement or mode of construction in regard to any such road, bridge, or other work which shall appear to them either to be in substantial compliance with the provisions of this and the special act, or to be calculated to afford equal or greater accommodation to the public using such road, bridge, or other work; and after any such certificate shall have been given by the Board of Trade, the road, bridge, or other work therein mentioned shall be constructed by the company in conformity with the terms of such certificate, and being so constructed shall be deemed to be constructed in conformity with the provisions of this and the special act: Provided always, that no such certificate shall be granted by the Board of Trade unless they shall be satisfied that existing private rights or interests will not be injuriously affected thereby.

8 & 9 VICT. c. 29.

(a) As an instance of the cases in which the Board of Trade may be referred to under this section, see *Pearce v. Wycombe Railway Co.*, 7 R. C. 902; 1 Drew. 244, in which the company transgressed their limits of deviation during the progress of their works, and gave no notice of such deviation to the landowner, the reference being agreed to by both parties, although a bill for an injunction had been filed.

References under this section.

LXVII. And be it enacted, that all regulations, certificates, notices, and other documents in writing purporting to be made or issued by or by the authority of the Board of Trade, and signed by some officer appointed for that purpose by the Board of Trade, shall for the purposes of this and the special act, and any act incorporated therewith, be deemed to have been so made and issued, and that without proof of the authority of the person signing the same, or of the signature thereto, which matters shall be presumed until the contrary be proved; and service of any such document, by leaving the same at one of the principal offices of the railway company, or by sending the same by post, addressed to the secretary at such office, shall be deemed good service upon the company; and all notices and other documents required by this or the special act to be given to or laid before the Board of Trade shall be delivered at, or sent by post addressed to, the office of the Board of Trade in London.

Authentication of certificates of the Board of Trade, service of notices, &c.

8 & 9 Vict. c. 20.

WORKS FOR PROTECTION, AND ACCOMMODATION
WORKS.

Works for Protection and Accommodation of Lands.

And with respect to works for the accommodation of lands adjoining the railway, be it enacted as follows:—

LXVIII. (a) The company shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway; that is to say,

Gates, bridges, &c.:

Such and so many convenient gates, bridges, arches, culverts, and passages over, under, or by the sides of or leading to or from the railway as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made; and such works shall be made forthwith after the part of the railway passing over such lands shall have been laid out or formed, or during the formation thereof:

Fences (b):

Also sufficient posts, rails, hedges, ditches, mounds, or other fences for separating the land taken for the use of the railway from the adjoining lands not taken, and protecting such lands from trespass, or the cattle of the owners or occupiers thereof from straying thereout, by reason of the railway, together with all necessary gates made to open towards such adjoining lands, and not towards the railway, and all necessary stiles; and such posts, rails, and other fences shall be made forthwith after the taking of any such lands, if the owners thereof shall so require, and the said other works as soon as conveniently may be:

Drains:

Also all necessary arches, tunnels, culverts, drains, or other passages, either over or under or by the sides of the railway, of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be; and such works shall be made from time to time as the railway works proceed:

Watering-places.

Also proper watering-places for cattle where by reason of the railway the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering-places; and such watering-

places shall be so made as to be at all times as sufficiently supplied with water as theretofore, and as if the railway had not been made, or as nearly so as may be; and the company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering-places:

Provided always, that the company shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the railway, nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

(a) The present section and s. 69 are in substitution for s. 10 of 5 & 6 Vict. c. 55: (*Per Jervis, C. J., Manchester, &c., Railway Co. v. Wallis*, 23 L. J. (C. P.) 87; 14 C. B. 220.)

The question whether works made by the company are works for the accommodation of the owners or occupiers of the adjoining lands within the meaning of the statute, is a question to be determined at the time of making the works: (*Reg. v. Fisher*, 3 B. & S. 191; 32 L. J. M. C. 12.)

Therefore, where certain persons were owners of mines extending under a railway, and the company had made drains upon their line for their own purposes and before the mines had been worked at all, but which when kept open and clear carried off water which otherwise percolated through the strata into the mines and interfered with the working of the mines, it was held that the drains were not accommodation works within the meaning of this section, and that justices had no jurisdiction under s. 69 to order the company to maintain and keep them in repair: the injury caused by the acts of the company was matter for an action: (*Ibid.*)

This section refers to what might be expected to occur upon the surface of the land, and not below the surface: (*Ibid.*)

These sections apply to the mere present use of the land, be it agricultural or otherwise, and not to any prospective use of it; so that, if land, part of which is taken by a railway company, is agricultural, the justices can order accommodation works only with reference to the land as used for agricultural purposes, and not with reference to a prospective use for building purposes: (*Reg. v. Brown*, L. R. 2 Q. B. 630.) The compensation jury, valuing it as building land, may estimate the damage done by severance without any regard to the power of justices to order accommodation works under these sections: (*Ibid.*)

The cases in Equity upon this section turn almost exclusively upon questions relating to agreements entered into between railway companies and landowners, and to the jurisdiction of the Court of Chancery to enforce such agreements.

That such a jurisdiction is vested in the Court is shown by the case of *Storer v. Great Western Railway Co.*, (2 Y. & C. 48,) in which

8 & 9 Vict. c. 20.

Accommodation works.

Section refers to surface damage only.

Accommodation works to be ordered only with regard to present mode of using land.

Compensation for severance incurred without regard to such works.

Contracts with regard to accommodation works.

Specific performance.

3 & 9 VICT. c. 20. an agreement to make a "neat archway" at such places as the plaintiff should appoint was ordered to be specifically performed.

"Neat archway."
Inquiries at
Chambers as to
works.

So also, inquiries at Chambers were directed as to what "roads, ways, and slips for cattle" were necessary upon the construction of an agreement for the purchase of land, subject to the construction of such works by the company: (*Sanderson v. Cockermouth Railway Co.*, 11 Bea. 498; 7 R. C. 613; 19 L. J. (Ch.) 503.)

A similar order was made in another case in which a contract for land and for the construction of a "siding, with all convenient approaches" was in question, although the Court could not superintend the carrying out of such an agreement: (*Lytton v. Great Northern Railway Co.*, 2 K. & J. 394; 2 Jur. N. S. 436; 4 W. R. 441; but see *South Wales Railway Co. v. Wythes*, 1 K. & J. 186; 5 De G. M. & G. 880.)

Repairs.

The question as to repairs of such works is, on each occasion on which a complaint arises, the subject of further inquiry: (*Ibid.*)

Obligation to re-
store levels.

Where the company agreed to restore the original level after intersecting a certain ropery, they were compelled to restore the surface so as to be available for all purposes to which it might have been applied before the construction of the railway, and not for the purposes of a ropery only: (*Harby v. East and West India Docks and Birmingham Junction Railway Co.*, 1 De G. M. & G. 290.)

And a landowner having withdrawn his opposition to a bill upon the faith of an agreement, by which the company were to make a certain road and an approach in a particular manner, the company were not allowed to alter the level of their line, and to vary the course and gradient of the road; and specific performance was, on appeal, decreed, although inconvenience to the public from an interference with the traffic rendered unavoidable by such a decree might ensue: (*Raphael v. Thames Valley Railway Co.*, L. R. 2 Ch. App. 147; L. R. 2 Eq. 37; 36 L. J. (Ch.) 209; 15 W. R. 322; 16 L. T. N. S. 1.)

Notice of works
required to be
executed.

If, however, the agreement for the construction of accommodation works contains a provision that notice of such works as the plaintiff may require shall be made within a fixed time, the Court holds that time is of the essence of the contract; and where this omission had in fact taken place, and the time for the exercise of the parliamentary powers had expired under s. 73, and rendered the 68th section inoperative, the House of Lords refused to grant specific performance, or to import a new agreement so as to give to the plaintiff "all necessary and proper crossings," as asked by his bill: (*Darnley v. London, Chatham, and Dover Railway Co.*, L. R. 2 H. L. 43; 1 De G. J. & Sm. 204; 3 De G. J. & Sm. 24; 9 Jur. N. S. 148; 33 L. J. (Ch.) 9.)

Difficulty or ex-
pense to the com-
pany do not affect
right to specific
performance.

Difficulty and expense of performing the contract do not necessarily form an objection to a decree for specific performance: (*Storer v. Great Western Railway Co.*, 2 Y. & C. 48; *Raphael v. Thames Valley Railway Co.*, L. R. 2 Ch. App. 147; L. R. 2 Eq. 37; 36 L. J. (Ch.) 209; 15 W. R. 322; 16 L. T. N. S. 1.)

Agreements
should incor-
porate Railways
Clauses Act.

Agreements providing for the construction of accommodation works should incorporate the Railways Clauses Act if it is intended by the company to take the benefit of its provisions for the construction of the railway, such as those limiting the width of roads, bridges, &c.: (*Clarke v. Manchester, &c., Railway Co.*, 1 J. & H. 631.)

A reference also to the Consolidation Acts in such agreements, providing for arbitration as to works, will exonerate arbitrators from the duty of including in their award matters specially provided for by the act: (*Skerratt v. North Staffordshire Railway Co.*, 5 R. C. 166.)

Awards need not include things provided for by general act. Liability under section same as if bound by prescription to repair.

(b) The liability of the company under this section is the same as it would be at common law if they had been bound by prescription to repair the fence—i.e., they are only bound to keep up the fence as against the cattle of owners or occupiers of the adjoining lands: (*Manchester, &c., Railway Co. v. Wallis*, 14 C. B. 220; 23 L. J. (C. P.) 85.)

The obligation on the company to maintain these works is absolute so far as respects the owners and occupiers of lands adjoining the railway; as between the company and passengers, the obligation on the company is to take all reasonable care to prevent cattle straying on to the line so as to endanger the safety of passengers: (*Buxton v. North-Eastern Railway Co.*, 16 W. R. 1124; 18 L. T. N. S. 795.)

How far obligation is absolute.

The obligation does not apply where the adjoining land belongs to the company. Thus, where a railway company licensed the plaintiff, on payment of toll, to use with trucks and horses a tramway belonging to the company, which ran for some distance parallel to their line, being separated from it by a fence which was also their property, down to a point where the tramway crossed the railway, at which point the company had placed gates which could be shut, but which, according to the evidence, never were shut, and while so using the tramway, one of the plaintiff's horses, alarmed at an approaching train, swerved through one of the open gates on to the railway, and was there killed by the engine, it was held in an action against the company that a count founded on the present section could not be sustained: (*Marfell v. South-Wales Railway Co.*, 29 L. J. (C. P.) 315.)

Obligation does not apply where company owns adjoining land.

So a declaration, stating that the defendants were possessed of a railway and station and yard adjoining, through which cattle carried by the railway to the station were obliged to pass in going from the station to a highway, and that the company were bound to maintain good and sufficient fences between the railway and the yard, so as to prevent cattle lawfully in the yard from straying on the railway, and alleging a breach, owing to which plaintiff's bull was killed, was held bad, there being no such liability to fence as alleged: (*Roberts v. Great-Western Railway Co.*, 4 C. B. N. S. 506; 27 L. J. (C. P.) 266; *Hardecastle v. South Yorkshire, &c., Railway Co.*, 4 H. & N. 67; 28 L. J. (Ex.) 139; *Hounsell v. Smyth*, 7 C. B. N. S. 731; 29 L. J. (C. P.) 203; *Binks v. South Yorkshire, &c., Railway Co.*, 32 L. J. (Q. B.) 26.)

Liability where cattle stray on to line in such cases.

If cattle are unlawfully on the land of adjoining owners, and thence stray on to the railway through defect of fences which the railway company is bound to maintain, the owner of the cattle cannot sustain an action against the company: (*Ricketts v. East and West India Docks, &c., Railway Co.*, 12 C. B. 160; 21 L. J. (C. P.) 201.)

Cattle unlawfully on adjoining land:

Thus where cattle were straying along the highway, and thence got through a defective fence on to the railway, and were there injured, the company were held not liable: (*Manchester, &c., Railway Co. v. Wallis*, 14 C. B. 213; 7 R. C. 709.)

As, where cattle stray from highway on to line.

But where a colt, after straying on to a highway, was being driven

8 & 9 VICT. c. 20. home, and whilst being so driven escaped into a railway yard, and on to the line, where it was killed, the company were held liable: (*Midland Railway Co. v. Daykin*, 17 C. B. 126.)

Secus, where cattle lawfully on highway.

Where petitioner's horses escaped from a field belonging to him on to the highway, which was crossed by the railway on a level, and passed through the gates across the highway, which were open, on to the railway, and were there killed by a train, it was held by the Court of Queen's Bench that the horses were, as against the defendants, "lawfully" on the highway, and that the company were bound, under s. 47, to keep their gates closed against cattle straying on the highway as well as others, and were liable for the damage sustained by the petitioner: (*Fawcett v. York and North Midland Railway Co.*, 16 Q. B. 610; 20 L. J. (Q. B.) 222.)

Form of action in cases of cattle straying, &c.

Case, not trespass, is the proper form of action against the company in the above cases: (*Sharrod v. London and North-Western Railway Co.*, 4 Exch. 580; 6 R. C. 239.)

Contributory negligence.

As to contributory negligence on the part of the owner of cattle injured, see *Ellis v. London and South-Western Railway Co.*, 2 H. & N. 424; 26 L. J. (Ex.) 349, *ante*, p. 374; and *Haigh v. London and North-Western Railway Co.*, 1 F. & F. 646.

Differences as to accommodation works to be settled by justices.

LXIX. If any difference arise respecting the kind or number of any such accommodation works, or the dimensions or sufficiency thereof, or respecting the maintaining thereof, the same shall be determined by two justices; and such justices shall also appoint the time within which such works shall be commenced and executed by the company (a).

Justices to decide only as to sufficiency of works.

(a) According to the Irish case of *R. v. Waterford and Limerick Railway Co.*, (2 Ir. C. L. Rep. 580,) the justices have only jurisdiction to decide on the kind, number, and sufficiency of the accommodation works, not whether there shall be accommodation works or not.

See *Reg. v. Fisher*, in the notes to preceding section, p. 379, as to what are accommodation works within the meaning of these sections.

Justices, not jury, decide as to communications.

The subject of communication is a matter solely for the determination of the justices; and if a compensation jury allows for the expense of providing a bridge to connect premises severed by a line of railway with the highway, they exceed their jurisdiction, and the inquisition will be quashed: (*South Wales Railway Co. v. Richards*, 13 Q. B. 988; 18 L. J. (Q. B.) 310.)

Execution of works by owners on default by the company.

LXX. If for fourteen days next after the time appointed by such justices for the commencement of any such works the company shall fail to commence such works, or having commenced shall fail to proceed diligently to execute the same in a sufficient manner, it shall be lawful for the party aggrieved by such failure himself to execute such works or repairs; and the reasonable expenses thereof shall be

repaid by the company to the party by whom the same shall so have been executed; and if there be any dispute about such expenses the same shall be settled by two justices: Provided always, that no such owner or occupier or other person shall obstruct or injure the railway, or any of the works connected therewith, for a longer time, nor use them in any other manner than is unavoidably necessary for the execution or repair of such accommodation works.

LXXI. If any of the owners or occupiers of lands affected by such railway shall consider the accommodation works made by the company, or directed by such justices to be made by the company, insufficient for the commodious use of their respective lands, it shall be lawful for any such owner or occupier, at any time, at his own expense, to make such further works for that purpose as he shall think necessary, and as shall be agreed to by the company, or, in case of difference, as shall be authorised by two justices.

Power to owners of land to make additional accommodation works.

LXXII. If the company so desire, all such last-mentioned accommodation works shall be constructed under the superintendence of their engineer, and according to plans and specifications to be submitted to and approved by such engineer; nevertheless the company shall not be entitled to require, either that plans should be adopted which would involve a greater expense than that incurred in the execution of similar works by the company, or that the plans selected should be executed in a more expensive manner than that adopted in similar cases by the company.

Such works to be constructed under the superintendence of the company's engineer.

LXXIII. The company shall not be compelled to make any further or additional accommodation works for the use of owners and occupiers of land adjoining the railway after the expiration of the prescribed period, or, if no period be prescribed, after five years from the completion of the works, and the opening of the railway for public use.

Accommodation works not to be required after five years.

See the case of *Darnley v. London, Chatham, and Dover Railway Co.*, L. R. 2 H. L. 43; 1 De G. J. & Sm. 204; 3 De G. J. & Sm. 24; 9 Jur. N. S. 148; 33 L. J. (Ch.) 9, cited under s. 68, *ante*, p. 380.

LXXIV. Until the company shall have made the bridges or other proper communications which they shall under the

Owners to be allowed to cross until accommo-

8 & 9 Vict. c. 20.
 —
 dation works
 are made.

provisions herein, or in the special act, or any act incorporated therewith, contained, have been required to make between lands intersected by the railway, and no longer, the owners and occupiers of such lands and any other persons whose right of way shall be affected by the want of such communication, and their respective servants, may at all times freely pass and repass, with carriages, horses, and other animals, directly (but not otherwise) across the part of the railway made in or through their respective lands, solely for the purpose of occupying the same lands, or for the exercise of such right of way, and so as not to obstruct the passage along the railway, or to damage the same; nevertheless, if the owner or occupier of any such lands have in his arrangements with the company received or agreed to receive compensation for or on account of any such communications, instead of the same being formed, such owner or occupier, or those claiming under him, shall not be entitled so to cross the railway (a).

(a) *Grand Junction Railway Co. v. White*, (8 M. & W. 214; 5 Jur. 775,) and *Manning v. Eastern Counties Railway Co.*, (12 M. & W. 237; 3 R. C. 637,) were cases decided on the construction of enactments of previous special acts relating to the subject of this section.

Penalty on persons omitting to fasten gates.

LXXV. If any person omit to shut and fasten any gate set up at either side of the railway, for the accommodation of the owners or occupiers of the adjoining lands, as soon as he and the carriage, cattle, or other animals under his care, have passed through the same, he shall forfeit for every such offence any sum not exceeding forty shillings.

BRANCH RAILWAYS.

Branch rail-
 ways.

Power to parties
 to make private
 branch railways
 communicating
 with the railway.

LXXVI. And be it enacted, That this or the special act shall not prevent (a) the owners or occupiers of lands adjoining to the railway, or any other persons, from laying down, either upon their own lands or upon the lands of other persons, with the consent of such persons, any collateral branches of railway to communicate with the railway, for the purpose of bringing carriages to or from or upon the railway, but under and subject to the provisions and restrictions of an act passed in the sixth year of the reign of her present Majesty, intituled "An Act for the better Regulation of Railways, and for the Conveyance of

5 & 6 Vict. c. 55,
 (post, Appendix.)

"Troops;" (b) and the company shall, if required, at the expense of such owners and occupiers and other persons, and subject also to the provisions of the said last-mentioned act, make openings in the rails, and such additional lines of rail as may be necessary for effecting such communication, in places where the communication can be made with safety to the public, and without injury to the railway, and without inconvenience to the traffic thereon; and the company shall not take any rate or toll or other moneys for the passing of any passengers, goods, or other things along any branch so to be made by any such owner or occupier or other person; but this enactment shall be subject to the following restrictions and conditions; (that is to say.)

No such branch railway shall run parallel to the railway: Restrictions and conditions.

The company shall not be bound to make any such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere, nor upon any inclined plane or bridge, nor in any tunnel:

The persons making or using such branch railways shall be subject to all bye-laws and regulations of the company (c) from time to time made with respect to passing upon or crossing the railway, and otherwise; and the persons making or using such branch railways shall be bound to construct, and from time to time, as need may require, to renew, the offset plates and switches according to the most approved plan adopted by the company, and under the direction of their engineer.

By the Railways Construction Facilities Act, 1864, (27 & 28 Vict. c. 121,) provisions are made for facilitating the making of branch and other lines of railways, and deviations of existing railways, of railways in course of construction, and of new works in connexion with existing railways, upon a certificate from the Board of Trade, where all the landowners and other parties beneficially interested are consenting to such undertakings, without the necessity of procuring a special act. See the act in the Appendix.

(a) This section applies to the owners of the lands from time to time, whoever they may be, and is not confined to the owners at the time the railway is made: (See *Monkland, &c., Railway Co. v. Dixon*, 3 R. C. 273; *Bishop v. North*, 11 M. & W. 418; 3 R. C. 459.)

(b) See the provisions of this act in the Appendix, and especially *sec. 12*.

Section applies to owners from time to time.

8 & 9 Vict. c. 20.	(c) The terms upon which a neighbouring landowner will be allowed to construct a branch line communicating with the line of a railway company, should be settled at the time when the consent of the latter is given; for in a case in which the plaintiff had constructed a branch at his own cost with the general assent of the directors, and had used the line for some time upon terms not actually agreed upon, but in which the directors had, as was held, acquiesced, those terms were considered <i>ipso facto</i> reasonable, and the plaintiff was held to be entitled to specific performance: (<i>Laird v. Birkenhead Railway Co.</i> , Johns. 500; 29 L. J. (Ch.) 218.)
Terms upon which branch line to be used.	
Acquiescence.	
Assent to an "opening" irrevocable.	The consent of a company to the making of an "opening," although it was likely to interfere with one of their stations, was held not to be in the nature of a licence, and to be incapable of revocation: (<i>Bell v. Midland Railway Co.</i> , 3 De G. & J. 673.)
Bye-laws must be reasonable.	The bye-laws and regulations to which the parties running trains from branches on to the line of a railway company are subject must be reasonable, but it is for such parties to prove their unreasonableness: (<i>Rhymney Railway Co. v. Taff Vale Railway Co.</i> , 30 L. J. (Ch.) 482.)

MINES.

And with respect to mines lying under or near the railway, be it enacted as follows:—

Working of mines.

Company not to be entitled to minerals.

LXXVII. The company shall not be entitled to any mines of coal, ironstone, slate, or other minerals (a) under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the works, unless the same shall have been expressly purchased; and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.

What are "minerals."

Stone quarry.

(a) At common law a very wide meaning has been given to these words. Mines have been defined as "quarries or places where anything is dug," and the word minerals "in its proper sense includes all fossil bodies or matter dug out of mines." Beds of stone which may be dug by mining or quarrying are therefore properly minerals: (*Earl of Rosse v. Wainman*, 2 Exch. 800; 14 M. & W. 859; *Micklethwait v. Winter*, 6 Exch. 644; 20 L. J. (Exch.) 313.)

It may be doubtful whether a stone quarry is a mine within the Railways Clauses Act. In a very recent case the Master of the Rolls held that a stone quarry was a mine under the words in a special act reserving the right to "all mines and minerals lying and being *within* or under the said lands or grounds," and observed that in his opinion, "that includes every species of mineral which is *within* the land, as distinguished from *under* it, and clearly includes quarrying, as well as mining, using both of those words in their special sense:" (*Midland Railway Co. v. Checkley*, L. R. 4 Eq. 19, 25; 36 L. J. (Ch.) 380; 15 W. R. 671; 11 L. T. N. S. 260.)

In a previous case, however, which may also be consulted on the general subject of the construction of reservations of minerals, Sir George Turner, L. J., in overruling the decision of Sir R. T. Kindersley, V.-C., decided that freestone is a mineral, but was satisfied that it was not intended by the deed, which excepted "mines within and under the lands, whether opened or unopened," that the freestone should be worked otherwise than by underground workings: (*Bell v. Wilson*, L. R. 1 Ch. App. 303; and the cases of *Rex v. Inhabitants of Sedgley*, 2 B. & Ad. 65, and *Rex v. Brettell*, 3 B. & Ad. 424, were referred to in support of this view.)

It is observable that the Lords Justices did not draw the distinction insisted on by the Master of the Rolls between the words *within* and *under* in the case of *Midland Railway Co. v. Checkley*, (*ubi supra*.)

Coke has been held to be the produce of a mine within the terms Coke of an Enclosure Act: (*Bowes v. Lord Ravensworth*, 15 C. B. 512.)

LXXVIII. If the owner, lessee, or occupier of any mines or minerals lying under the railway, or any of the works connected therewith, or within the prescribed distance, or, where no distance shall be prescribed, forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give to the company notice in writing of his intention so to do thirty days before the commencement of working; and upon the receipt of such notice it shall be lawful for the company to cause such mines to be inspected by any person appointed by them for the purpose; and if it appear to the company that the working of such mines or minerals is likely to damage the works of the railway, and if the company be willing to make compensation for such mines, or any part thereof, to such owner, lessee, or occupier thereof, then he shall not work or get the same; and if the company, and such owner, lessee, or occupier, do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation (b).

(a) Independently of parliamentary enactment the effect of a conveyance of land to a railway company with a reservation of all mines under it, with full liberty to mine and work the minerals, is to convey the land together with a right to all reasonable adjacent and sub-jacent support; a right to such support being a right necessarily connected with the subject-matter of the grant, and the grantor cannot derogate from his own grant by removing that support: (*Caledonian Railway Co. v. Sprot*, 2 M'Q. H. L. 449; *Caledonian Railway Co. v. Lord Belhaven*, 3 M'Q. H. L. 56. And see *Harris v. Reding*, 5 M. & W. 60; *Humphries v. Brogden*, 12 Q. B. 739; *Wakefield v. Duke of Buccleuch*, L. R. 4 Eq. 613; 36 L. J. (Ch.) 179.)

(b) Where the company having the option does not purchase, the

Mines lying near the railway not to be worked if the company willing to purchase them (a).

Right to support implied by conveyance of land.

8 & 9 VICT. c. 20. owner may work the mine in the ordinary way, and will not be answerable for damage by subsidence, (*Wyrley Canal Co. v. Bradley*, 7 East, 368.) even if the act says that they are to be worked so as that "no injury be done;" this proviso meaning either that the party working the mines is to do no unnecessary damage, or no extraordinary injury by working them out of the ordinary and usual mode: (*Swindell v. Birmingham Canal Navigation Co.*, 29 L. J. (C. P.) 364; *Dudley Canal Co. v. Grazebrook*, 1 B. & Ad. 59; *Stourbridge Canal Co. v. Dudley*, 30 L. J. (Q. B.) 108.)

These cases were decided with reference to canal acts containing provisions similar to those in the present section, and therefore equally apply to the working of mines under and adjoining railways.

Mines may be worked even though injury must result to the soil.

There is also express decision with respect to railways, that if the company do not purchase the mines, they cannot prevent the owner from working them, even though the mines could never have been worked without injury to the surface soil: (*Fletcher v. Great Western Railway Co.*, 4 H. & N. 242; 28 L. J. (Exch.) 147; 29 *Ibid.* 253.) And the House of Lords (affirming the judgments of the Courts of Exchequer Chamber and Queen's Bench) has laid it down that the owner may work the mines up to and under the railway, working them in a "proper manner," and "according to the usual manner of working such mines in the district;" and that the company cannot under a statutory purchase of lands for the purposes of their railway under these sections, claim the benefit of the right of an ordinary purchaser of the surface to subjacent and adjacent support, the statute having created a specific law for such matters, by which alone the rights of the company and the mine owner are regulated: (*Great Western Railway Co. v. Bennett*, L. R. 2 H. L. 27; 36 L. J. (Q. B.) 133; 16 L. T. N. S. 186.)

Amount of support.

"All which a grantor can reasonably be considered to grant, or warrant, is such a measure of support, subjacent and adjacent, as is necessary for the land in its condition at the time of the grant, or in the state, for the purpose of putting it into which the grant is made:" (*Per Lord Cranworth*, L. C., in *Caledonian Railway Co. v. Sprot*, 2 M'Q. H. L. 451.)

With respect to this case, Lord Cranworth observes in the later case of *Great Western Railway Co. v. Bennett*, *ubi supra*,—"In the case of the *Caledonian Railway Co. v. Sprot*, the conclusion at which this House arrived was, that although the sale of the land was one which might have been compelled, probably, under the statutes then in force, (not the present statute, because it was before the passing of this statute now in force;) yet in truth it was a mere contract between Mr Sprot and the company, and must be dealt with just as if no statute existed. But the difficulties which had arisen upon this subject were, I presume, what gave rise to these provisions of the Railways Clauses Act which are now under discussion. It was obviously the intention of the Legislature, in making these provisions, to create a new code as to the relation between mine owner and railway companies, where lands were compulsorily taken for the purpose of making a railway."

In a case in which a railway bridge had been built resting upon land under which was a mine which was at the time of building filled with water, it was ascertained that the pillars left in the mine were

sufficient support, but that the upward pressure of the water gave § 9 VICT. c. 20. considerable additional support, and it was held by the Vice-Chancellor Sir W. P. Wood, (in following the case of *Caledonian Railway Co. v. Sprot*, 2 M'Q. H. L. 449,) that it did not make any material difference whether the conveyance was voluntary or compulsory; that the state of the mine was an accidental circumstance, which persons conversant with mining affairs must know might very probably be altered; that the company should therefore have stipulated for the continuance of the existing state of things; and that, there being no such contract, the plaintiff might drain the shaft: (*North-Eastern Railway Co. v. Elliott*, 1 J. & H. 145.)

Lord Campbell, L. C., in affirming the decision of the Vice-Chancellor, held that a conveyance under an act of Parliament must have the same incidents as an ordinary conveyance, and that the right to support was established by *Caledonian Railway Co. v. Sprot*, (*ubi supra*), (2 De G. F. & J. 423.) And the House of Lords confirmed this decision to the fullest extent: (10 H. L. 333.)

The fact that a railway bridge is of unusual weight and solidity does not affect the right of the company to subjacent and adjacent support: (*North-Eastern Railway Co. v. Elliott*, 2 De G. F. & J. 423; 10 H. L. 333.) Where railway bridge is of unusual weight.

Where a conveyance had been made to a company whose act provided that conveyances should not pass minerals, and that the owners might work minerals under the railway, doing no damage to the railway; and the right of the company passed to another company, whose act gave the right (subject to a notice giving an option to the company to purchase) to work minerals, "doing no wilful damage, and not working in an improper manner;" an injunction was granted restraining the mine-owner from working such minerals, to the support of which the plaintiffs were entitled under their contracts, in such a manner as to occasion damage to the railway or works by the abstraction of such minerals: (*North-Eastern Railway Co. v. Crossland*, 2 J. & H. 565.) Mode of working where right to work is given under act.

It is not necessary that the order for injunction in these cases should state the precise limits within which the mines may be worked: (*North-Eastern Railway Co. v. Elliott*, 1 J. & H. 145; 2 De G. F. & J. 423; 10 H. L. 333.) Limits of working.

It appears from a late case, that where the question with regard to the working of mines is not one merely of injunction, but of compensation, the cases of *Caledonian Railway Co. v. Sprot*, and *North-Eastern Railway Co. v. Elliott* (cited above) do not apply. In such cases, the Master of the Rolls held that the company can stop all dangerous working at any time they think fit, and that they are the sole judges of when the working becomes dangerous, whether within the statutory limits (see s. 78) or not; but that whenever they stop it they are bound to pay compensation: (*Midland Railway Co. v. Checkley*, L. R. 4 Eq. 19; 36 L. J. (Ch.) 380; 15 W. R. 671; 16 L. T. N. S. 260; following *Wyrley Canal Co. v. Bradley*, 7 East, 368; *Bagnell v. London and North-Western Railway Co.*, 7 H. & N. 423; *Birmingham Canal Co. v. Earl Dudley*, 7 H. & N. 969; *Birmingham Canal Co. v. Swindell*, 7 H. & N. 980 n.; *Stourbridge Canal Co. v. Earl Dudley*, 30 L. J. (Q. B.) 108; *Dudley Canal Co. v. Grazebrook*, 1 B. & Ad. 59.) Where question is not merely of injunction but of compensation.

390 *Railways Clauses Consolidation Act, 1845, ss. 78, 79.*

8 & 9 Vict. c. 20. It had been previously held that a railway company were not entitled to support for their tunnel within the forty yards prescribed by s. 78, without paying compensation to the mine-owner: (*London and North-Western Railway Co. v. Ackroyd*, 31 L. J. (Ch.) 588; following *Fletcher v. Great Western Railway Co.*, 28 L. J. (Ex.) 147; 29 L. J. (Ex.) 253.)

Compensation for future damage to mines.

Where a local act empowered a company to take lands excepting the mines, on paying the value of the lands, and making compensation for damages sustained under any of the powers of the act, and in making alterations for the use of the railway by the owner of a coal mine, the compensation to comprise damages already sustained, and future temporary, perpetual, or recurring damages; in case of damage to the railway by the working of the mines, the owner to repair it at his own cost; land having been taken, and the amount of compensation agreed on, without taking the coal mine into account, the owner afterwards, in working the mine, damaged the railway, and found that the mine could not be worked without doing damage to the railway, and claimed further compensation for the sum it cost him to repair the damage done, and for interruption to the working of the mine. It was held that compensation for such contingent loss should have been claimed at the time of the original agreement or assessment: (*Rex v. Leeds and Selby Railway Co.*, 3 Ad. & El. 683. See also *Reg. v. Aire and Calder Navigation Co.*, 30 L. J. (Q. B.) 337; *Stourbridge Canal Co. v. Dudley*, 30 L. J. (Q. B.) 108.)

Recovery of compensation by action.

If the amount of compensation is assessed in the proper manner, the owner may recover the amount by action: (*Fletcher v. Great Western Railway Co.*, *ubi supra*.)

If, however, a statute directs a feigned issue, that course must be pursued: (*Fenton v. Trent and Mersey Navigation Co.*, 9 M. & W. 203; 2 R. C. 837; *Lister v. Loble*, 7 Ad. & El. 124; *R. v. North-Midland Railway Co.*, 2 R. C. 1.)

Reservation of coal-mines with way-leave and stay-leave.

A reservation of mines of coal, with way-leave and stay-leave, involves a right to construct a modern railway: (*Dand v. Kingscote*, 6 M. & W. 196.) The object of such a reservation is to get the coals beneficially to the owner of them, and therefore there passes by it a right to such a description of way-leave, and in such a direction, as would be reasonably sufficient to enable the coal-owner to get from time to time all the seams of coal at a reasonable profit; and the owner is not confined to such description of way as was in use at the time of the grant, and in such direction as was then convenient: (*Ibid.*)

Where a canal act empowered certain mine-owners to make any railway or road to convey their coals to the canal over the lands of any person on paying compensation, it was held that the power to make railways extended to persons who became proprietors of the coal mines subsequently to the passing of the act, and to running locomotive engines, although such engines were unknown when the act passed: (*Bishop v. North*, 11 M. & W. 418; 12 L. J. (Ex.) 362; *Farrow v. Vansittart*, 1 R. C. 602.)

If Company unwilling to purchase, owner may work the mines (a).

LXXIX. If before the expiration of such thirty days the company do not state their willingness to treat with such

owner, lessee, or occupier for the payment of such compensation, it shall be lawful for him to work the said mines, or any part thereof, for which the company shall not have agreed to pay compensation, so that the same be done in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the district where the same shall be situate; and if any damage or obstruction be occasioned to the railway or works by improper working of such mines, the same shall be forthwith repaired or removed, as the case may require, and such damage made good, by the owner, lessee, or occupier of such mines or minerals, and at his own expense; and if such repair or removal be not forthwith done, or, if the company shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the company to execute the same, and recover from such owner, lessee, or occupier the expense occasioned thereby, by action in any of the Superior Courts.

8 & 9 Vict. c. 20.

(a) See the notes to ss. 78 and 79, *ante*.

LXXX. If the working of any such mines under the railway or works, or within the above-mentioned distance therefrom, be prevented as aforesaid by reason of apprehended injury to the railway, it shall be lawful for the respective owners, lessees, and occupiers of such mines, and whose mines shall extend so as to lie on both sides of the railway, to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures, or strata, the working whereof shall be so prevented, as may be requisite to enable them to ventilate, drain, and work their said mines, but no such airway, headway, gateway, or water level shall be of greater dimensions or section than the prescribed dimensions and sections, and where no dimensions shall be described not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the railway or works, or so as to injure the same, or to impede the passage thereon.

Mining communications.

LXXXI. The company shall from time to time pay to the owner, lessee, or occupier of any such mines extending so as to lie on both sides of the railway, all such additional expenses and losses (a) as shall be incurred by such owner,

Company to make compensation for injury done to mines.

§ 9 VICT. c. 20. lessee, or occupier by reason of the severance of the lands lying over such mines by the railway, or of the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the railway, and for any minerals not purchased by the company which cannot be obtained by reason of making and maintaining the railway; and if any dispute or question shall arise between the company and such owner, lessee, or occupier as aforesaid, touching the amount of such losses or expenses, the same shall be settled by arbitration (b).

Loss of profit. (a) Loss of profit may, it seems, be taken into consideration in estimating the compensation due to the mine-owner under this section. Thus, in a case in which a coal-owner was to leave as much coal on each side of their canal as the canal company required, the company were held bound to make compensation for loss of profit, as well as for the coal actually left: (*Barnsley Canal Co. v. Twibell*, 13 L. J. (Ch.) 434.)

Assessment of compensation by commissioners, jury, or arbitration.

As to the decree which the Court of Chancery would make in cases of disputed right to support, or of working within a limited distance, see *Midland Railway Co. v. Checkley*, L. R. 4 Eq. 19, 29; 36 L. J. (Ch.) 380; 15 W. R. 671; 16 L. T. N. S. 260.

(b) It appears from the case last referred to that where the act has provided a means of assessing the compensation, by commissioners or a jury, or under the Railways Clauses Act by arbitration, it will refer the question of assessment back to the statutory tribunal, and not assume that jurisdiction for itself: (*Ibid.*)

See further the notes to ss. 77 and 78, *ante*.

And also for any airway or other work made necessary by the railway.

LXXXII. If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines, the working whereof shall have been so prevented as aforesaid, (and not being the owner, lessee, or occupier of such mines,) by reason of the making of any such airway or other work as aforesaid, which or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid, the company shall make full compensation to such owner or occupier of the surface lands for the loss or damage so sustained by him.

Power to company to enter and inspect the working of mines.

LXXXIII. For better ascertaining whether any such mines are being worked or have been worked so as to damage the railway or works, it shall be lawful for the company, after giving twenty-four hours' notice in writing, to enter upon any lands through or near which the railway

passes wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such mines, or the works connected therewith; and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and to use all necessary means for discovering the distance from the railway to the parts of such mines which are being worked or about so to be.

S & 9 VICT. C. 20.

LXXXIV. If any such owner, lessee, or occupier of any such mine shall refuse to allow any person appointed by the company for that purpose to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for every such refusal forfeit to the company a sum not exceeding twenty pounds.

Penalty for refusal to inspect.

LXXXV. If it appear that any such mines have been worked contrary to the provisions of this or the special act, the company may, if they think fit, give notice to the owner, lessee, or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the railway, and preventing injury thereto; and if after such notice any such owner, lessee, or occupier do not forthwith proceed to construct the works necessary for making safe the railway, the company may themselves construct such works, and recover the expense thereof from such owner, lessee, or occupier by action in any of the Superior Courts.

If mines improperly worked, the company may require means to be adopted for the safety of the railway.

RAILWAY CARRIERS—TOLLS.

And with respect to the carrying of passengers and goods upon the railway (a), and the tolls to be taken thereon, be it enacted as follows:—

Passengers and goods on railway.

LXXXVI. It shall be lawful for the company to use and employ locomotive engines or other moving power, and carriages and waggons to be drawn or propelled thereby, and to carry and convey upon the railway all such passengers and goods as shall be offered to them for that purpose, and to make such reasonable charges in respect thereof as they may from time to time determine upon, not exceeding the tolls by the special act authorised to be taken by them (b).

Company to employ locomotive power, carriages, &c.

8 & 9 VICT. c. 20.

Duty of railway companies to make arrangements for receiving and forwarding traffic without unreasonable delay and without partiality.

Delivery of returns.

Power to revise charges and tolls.

Power of Board of Trade to regulate maximum tolls.

Section enabling only.

(a) By the "Railway and Canal Traffic Act, 1854," (17 & 18 Vict. c. 31,) s. 2, every railway company, canal company, and railway and canal company, shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles; and no such company shall give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever; nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and every railway company, and canal company, and railway and canal company, having or working railways or canals, which form part of a continuous line of railway or canal, or railway and canal communication, or which have the terminus, station, or wharf of the one near the terminus, station, or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways or canals by the other, without unreasonable delay, and without any such preference or advantage, or prejudice, or disadvantage as aforesaid; and so that no obstruction may be offered to the public desirous of using such railways or canals, or railways and canals, as a continuous line of communication; and so that all reasonable accommodation may, by means of the railways and canals of the several companies, be at all times afforded to the public in that behalf: (See the Act in the Appendix.)

By the 3d section of 3 & 4 Vict. c. 97, an Act for the Regulation of Railways, the Board of Trade may direct every railway company to deliver returns of traffic in passengers, cattle, and goods, of accidents, and of tolls and charges levied: (See the Act in the Appendix.)

The Lords of the Treasury have, under 7 & 8 Vict. c. 85, power to revise the scale of charges and tolls levied on railways.

By the Commons' Standing Order, No. 153, (1867-1868,) "The committee on every railway bill shall fix the tolls, and shall determine the maximum rates of charge for the conveyance of passengers, with a due amount of luggage and of goods, on such railway; and such rates of charge shall include the tolls and the costs of locomotive power, and every other expense connected with the conveyance of passengers, with a due amount of luggage and of goods, upon such railway. But if the committee shall not deem it expedient to determine such maximum rates of charge, a special report, explanatory of the grounds of their omitting so to do, shall be made to the House, which special report shall accompany the report of the bill."

(b) This section only enables a railway company to be carriers, leaving them at liberty to exercise their common law right of carrying any particular description of goods only from and to particular places: (*Johnson v. Midland Railway Co.*, 4 Ex. 367; 6 R. C. 61; and see *Hare v. London and North-Western Railway Co.*, 2 J. & H. 80; 30 L. J. (Ch.) 817.)

See *post*, notes to s. 89.

In railway acts, any ambiguity in a clause imposing tolls or duties is to be construed against the company, and in favour of the public: (*Stockton and Darlington Railway Co. v. Barrett*, 7 Man. & G. 870.) Ambiguity.

Where a railway company, authorised by their special act to charge a toll on carriages passing along their line, refused to convey certain coal-trucks loaded with coal except on payment of the charge both for conveying the coals and for bringing back the empty trucks, it was held by the Court of Queen's Bench, on application for a prohibition to a County Court judge, that the title to take toll was not in question, and that the County Court judge had jurisdiction to determine whether the coal-trucks fell under the denomination of "carriages," in respect of which a toll was payable: (*Hunt v. Great Northern Railway Co.*, 10 C. B. 900; 20 L. J. (Q. B.) 349.)

A clause in an act providing that the charges to be made for the carriage of passengers, goods, or other matters or things, should be at all times charged equally, and after the same rate per ton per mile, in respect of all passengers and goods of a like description, and conveyed and propelled by a like carriage or engine, passing on the same portion of line only, and under the same circumstances, and that no reduction or advance in any charge for conveyance by the company, or for the use of any locomotive power to be supplied by them, should be made either directly or indirectly, in favour of or against any particular company or person travelling upon or using the same portion of the railway under the same circumstances, was held to be meant only to prevent the exercise of a monopoly to the prejudice of one passenger or carrier in favour of another; it was to give an equal right to the conveyance to the public; and an arrangement whereby the railway company charged a larger sum to persons travelling a small part of the distance on the way to London, than to those travelling over the same distance and going through to London, was not held to be at variance with the interests of the public, and an injunction to restrain the continuance of the arrangement was refused: (*Attorney-General v. Birmingham and Derby Junction Railway Co.*, 2 R. C. 124.)

It seems doubtful whether a railway company may make separate arrangements with different individuals, to carry the goods of one at the same rate for a longer journey, as is charged to another for a shorter journey: (*Pickford v. Grand Junction Railway Co.*, 3 R. C. 538, 562.) See as to this s. 2 of the Railway and Canal Traffic Act, 1854, cited *supra*. Arrangement as to different charges to different persons.

Where an option is given to a party sending packages containing small parcels, to pay according to an average, or to pay for the parcels separately, if the principle of an average be legal, and the amount of it reasonable, although the alternative requiring the party to pay for the separate parcels may be *per se* illegal, that will not render the demand to pay according to the average illegal, and the Court of Chancery will refuse any injunction until the illegality is established at law: (*Pickford v. Grand Junction Railway Co.*, 3 R. C. 538.) Average.

It would appear that an agreement between two railway companies, that one of them should not carry traffic over a particular portion of their line is not illegal: (*Lancaster and Carlisle Railway* Agreement not to carry traffic over part of line.)

8 & 9 Vict. c. 20, *Co. v. London and North-Western Railway Co.*, 2 K. & J. 293; 21 L. J. (Ch.) 223.)

Railway company not bound to be carriers.

It is at all events true that a railway company are not bound to exercise their function as carriers, except as to the mails and the Queen's troops, although, if they accept the goods for the purpose of carrying, they are bound to send them to their destination: (*Hare v. London and North-Western Railway Co.*, 2 J. & H. 80, 105, 110.)

Company empowered to contract with other companies.

LXXXVII. It shall be lawful for the company from time to time to enter into any contract with any other company, being the owners or lessees or in possession of any other railway, for the passage over or along the railway by the special act authorised to be made of any engines, coaches, waggons, or other carriages of any other company, or which shall pass over any other line of railway, or for the passage over any other line of railway of any engines, coaches, waggons, or other carriages of the company, or which shall pass over their line of railway (a), upon the payment of such tolls (b) and under such conditions and restrictions as may be mutually agreed upon; and for the purpose aforesaid it shall be lawful for the respective parties to enter into any contract for the division or apportionment of the tolls to be taken upon their respective railways.

Contracts by directors.

(a) As to the power of directors to enter into contracts, see s. 97 of the Companies Clauses Act, 1845, *ante*, p. 89, *et seq.*; and as to the control which shareholders may exercise over the acts of directors, see the notes to s. 90 of that act, *ante*, p. 72, *et seq.*

Lease of line.

Where a railway company is authorised by special act to lease the railway, the lease must be in accordance with the provisions of s. 112 of the Railways Clauses Act, 1845, *post*.

Railway and Canal Traffic Act, 1854: duty to facilitate through traffic.

Provisions are contained in the Railway and Canal Traffic Act, 1854, (17 & 18 Vict. c. 31; see Appendix,) imposing the duty on railway companies, having lines in continuation with the lines of other companies, to forward the through traffic without unreasonable delay, and without partiality. See note (a) to preceding section.

Railways Clauses Act, 1863, Part III, ss. 22-28.

By Part III. of the Railways Clauses Act, 1863, (*post*), it is enacted that no working agreement is to affect tolls which either party is authorised to demand, (s. 22;) that agreements are, save so far as they are authorised by the Railways Clauses Act, 1845, to be sanctioned by the shareholders in general meeting, (s. 23;) that public notice of the intention to enter into agreements is to be given, (s. 24;) that every agreement is to have the sanction of the Board of Trade, (s. 25;) that there shall be a joint-committee composed of some directors from each of the agreeing companies, (s. 26;) that the Board of Trade may modify agreements, (s. 27;) that these enactments shall apply to agreements between railway companies and individuals, (s. 28.)

Contracts made under this section should be carefully framed so as to prevent the application of the principle laid down in several of the cases cited below, that terms which may be construed into a delegation of the powers conferred by Parliament upon a railway company, vitiate any working arrangement containing such terms.

Working arrangements must not amount to delegation of powers.

It has been held that although a railway company are not bound to be carriers, (see note to preceding section, and the Railway and Canal Traffic Act, 1854, cited *supra*), they are bound to work the railway: (*Winch v. Birkenhead Railway Co.*, 5 De G. & Sm. 562; 7 R. C. 384.)

Company bound to work the railway.

And an agreement by which a railway company are to work the line of another company, is not an agreement within s. 87: (*Simpson v. Denison*, 10 Hare, 51; 7 R. C. 403.)

Agreement to work line of another.

An agreement that a railway company should work another railway for ninety-nine years, using the plant and rolling-stock of the latter, was held to amount to a delegation of powers within the principle mentioned above, and therefore illegal upon the construction of s. 87, which gives a limited power to a company to run a portion of its traffic, where necessary, for the purposes of such traffic, over another line, but does not authorise an agreement, which in effect was not distinguishable from an agreement for a lease, to enter into which the sanction of Parliament was necessary: (*Winch v. Birkenhead Railway Co.*, 5 De G. & Sm. 562; 7 R. C. 384.) As to the power of the company or its directors to apply the funds of the company to obtain acts of Parliament, see the notes to ss. 65 and 90 of the Companies Clauses Act, 1845, *ante*.

Agreement to work another line for a term of years.

In like manner a contract entered into by a railway company with two other companies, who were to work the whole undertaking for twenty-one years, the first-mentioned company to find the stock and plant, was held to be a delegation of powers and invalid: (*Benan v. Rufford*, 1 Sim. N. S. 550; 7 R. C. 48.)

The Court of Chancery will not interfere in cases where an agreement operates as a delegation of powers without any sanction by Parliament, where its interference would assist the objects of the parties to such an agreement: (*Great Northern Railway Co. v. Eastern Counties Railway Co.*, 9 Hare, 306; 7 R. C. 643; 21 L. J. (Ch.) 837.)

Court will not interfere to assist operation of invalid agreement.

There are several cases, however, in which the most various and conflicting decisions have been given upon the question of the validity of particular working agreements, by the several judges before whom they were argued.

Thus, where the effect of an agreement was, as stated by V.-C. Wood in a subsequent case, (see *Hare v. London and North-Western Railway Co.*, *infra*), to constitute a complete partnership in every sense, because the whole profits over the specified line were to be divided in fixed proportions, there being also an absence of mutuality in point of duration of the agreement as it affected two of the companies, and the agreement being in fact a contrivance to evade the consequences of a failure to obtain certain leasing powers, it was nevertheless held by Lord Cottenham and the Court of Queen's Bench, out of seven equity and seven common law judges who heard the case, that the agreement was not invalid: (*Shrewsbury and*

Shrewsbury and Birmingham case.

Agreement constituting a partnership.

Absence of mutuality.

Contrivance to evade necessity for act of Parliament.

8 & 9 Vict. c. 20. *Birmingham Railway Co. v. London and North-Western Railway Co.*, 3 M.N. & G. 70; 4 De G. M. & G. 115; 7 R. C. 531; 20 L. J. (Ch.) 90; 17 Q. B. 652; 6 H. L. 113.)

Hare v. London and North-Western Railway Co. And, upon the authority of the Shrewsbury and Birmingham case, V.-C. Wood, considering that upon the whole the authorities who expressed opinions in that case treated the agreement upon which the question turned as not illegal, held that certain companies, owning distinct groups of lines, were justified in coming to a *bonâ fide* arrangement by which, having calculated the probable amount of traffic which would in the ordinary way flow over the one or the other route, they agreed for a certain period of years to take this calculated proportion as the basis of their arrangement: (*Hare v. London and North-Western Railway Co.*, 2 J. & H. 80; 30 L. J. (Ch.) 817.)

Agreement as to future traffic of proposed line illegal. But in a later case which arose upon the same agreement as that in *Hare v. London and North-Western Railway Co.*, it was held by Sir R. T. Kindersley, V.-C., that it was *ultra vires* of directors to enter into a contract fixing and regulating the future traffic which might be carried upon a line of railway which the company might thereafter be empowered to construct, and the profits of such traffic, so as to give to another railway company an interest in such traffic and profits: (*Midland Railway Co. v. London and North-Western Railway Co.*, L. R. 2 Eq. 524.)

Tolls. The following agreement entered into between two railway companies was held, in an action upon the deed for tolls for the use of plaintiffs' line, legally valid under this section, and not objectionable as being *ultra vires*; that the defendants' company might for twenty-one years, from the 13th July 1851, pass over the railways of the plaintiffs, and have free use of their works and conveniences, with engines and waggons for the purpose of carrying coal; that such passage should be had and made on payment of the tolls, and under the following restrictions and conditions, viz., when the quantity of coal carried over any part of the plaintiffs' railways to the defendants' railway, and thence to certain specified places, should not amount to 125,000 tons in the space of six calendar months, commencing 1st July or 1st January, and ending 31st December or 30th June, during the said term of twenty-one years, then the defendants would pay to the plaintiffs such toll for such passage for such period of six calendar months as would, with any clear profit which might be made by the plaintiffs before the same period, after payment of all annual and half-yearly charges for interest and outgoings, and all expenses of management or otherwise, be sufficient to enable the plaintiffs to pay such dividends as might become payable in respect of any guaranteed or preference stock of the plaintiffs' already issued or hereafter to be issued with the consent of the defendants, and also a clear net dividend at the rate of £3 per cent. per annum, for such period of six calendar months, upon the ordinary capital stock for the time being of the plaintiffs; and when the quantity of coal for any such period of six calendar months should exceed 125,000 tons and not 150,000 tons, such sum as would make up in manner before mentioned the demand upon the preference stock, and £3, 5s. per cent. upon the ordinary stock; and when the quantity of coal during the like period of six

calendar months should exceed 150,000 tons and not 175,000 tons, s & 9 VICT. c. 20. such sum as would make up in like manner the dividend upon the preference stock and £3, 10s. per cent. upon the ordinary stock, and so on progressively up to the carriage of upwards of 400,000 tons during any such period of six calendar months, in which case the defendants were to pay the plaintiffs such sum as, together with the clear profits made by the plaintiffs during the same period, would pay the dividends upon the preference stock and £6 per cent. upon the ordinary stock. The deed then went on to provide with respect to the calculations of the number of tons, &c., and that if the payment made by the defendants for any period of six months once made up £4, 10s. per cent. upon the ordinary stock of the plaintiffs, it should never otherwise recede: (*Great Northern Railway Co. v. South Yorkshire and River Dun Co.*, 9 Exch. 55, 642; 7 R. C. 744, 771.)

(b) The meaning of the word "toll" in this section seems to be a payment of money, the consideration of which is the passage of passengers, carriages, or goods on the railway, though the payment be not limited to any single sum for each passenger, &c., and although there be variations in the rate of payment: (See the judgment of the Exchequer Chamber in *Great Northern Railway Co. v. South Yorkshire and River Dun Railway Co.*, *ubi supra*.) And the Court of Chancery refused to restrain the payment of a dividend by the plaintiffs until the sums due upon the agreement were provided for: (*Ibid.*, 3 De G. M. & G. 576. And see *East Anglian Railway Co. v. Eastern Counties Railway Co.*, 21 L. J. (C. P.) 23; *McGregor v. Deal and Dover Railway Co.*, 22 L. J. (Q. B.) 69.)

It has been further held with respect to the meaning of the word "tolls" that a payment, under an agreement, of such an amount as would, after answering all expenses and liabilities, furnish a dividend of four per cent. is not a payment of "tolls" within this section: (*Simpson v. Denison*, 10 Hare, 51; 7 R. C. 403.)

It was observed by Vice-Chancellor Wood in *Hare v. London and North-Western Railway Co.*, that an allegation that injury would be caused to the public by the prevention of competition, in consequence of working agreements between several companies, is not sufficient to invalidate such agreements, (2 J. & H. 103;) and that an intention to prevent such competition as would be ruinous to the companies, and not tending to the benefit of the public, is a good ground for holding such agreements to be valid: (See also *Midland Railway Co. v. London and North-Western Railway Co.*, L. R. 2 Eq. 524.)

A contract entered into between two directors of each of two railway companies, and signed by them, for the mutual right of running their engines, &c., on the two lines respectively, but without granting such right to the "successors" of either company, was held to be a permanent right, and not a mere licence: (*Great Northern Railway Co. v. Manchester, Sheffield, &c., Railway Co.*, 5 De G. & Sm. 138.)

One of the terms of a traffic agreement being that the plaintiffs should complete a proposed line, four years' acquiescence in the non-completion of it was held to disentitle the defendants from

Meaning of "tolls."

Prevention of competition not a reason for setting aside traffic agreement.

Duration of agreements.

Acquiescence.

400 *Railways Clauses Consolidation Act, 1845, ss. 87, 88.*

8 & 9 Vict. c. 20. obstructing the plaintiffs in using their line: (*Great Northern Railway Co. v. Lancashire and Yorkshire Railway Co.*, 1 Sm. & G. 81.)

Amalgamation. See as to amalgamation, Part V. of the Railways Clauses Act, 1863, *post*.

As to the effect of an agreement for amalgamation upon a traffic arrangement previously entered into, see *London, Chatham, and Dover Railway Co. v. South-Eastern Railway Co.*, 2 W. N. 249.

Effect of s. 92 on working agreements. The 92d section of this act, which declares that railways are to be free as public highways upon payment of tolls, is not to be construed so as to give validity to traffic agreements whereby a delegation of powers is effected; for agreements are to be construed upon their provisions, and cannot have a wider effect by virtue of the provisions of the act: (*Great Northern Railway Co. v. Eastern Counties Railway Co.*, 9 Hare, 306; 21 L. J. (Ch.) 837.)

Variations imported into agreement. And an agreement, in itself valid, is not to be construed, by importing variations into its terms, so as to restrict one of the parties to it further than its express terms allow: (*Greathead v. London and South-Western, &c., Railway Co.*, 4 R. C. 213.)

Where an agreement for working the through traffic had been entered into between two companies, and one of them afterwards, treating such agreement as invalid, entered into another and independent agreement, inconsistent with the original agreement, with a third company, it was held that there was a *bonâ fide* question as to the validity of the first agreement, and that the Court, having regard to the balance of inconvenience and benefit, would not interfere at the instance of the company who treated it as illegal: (*Shrewsbury and Chester v. Shrewsbury and Birmingham Railway Co.*, 1 Sim. N. S. 410.)

Joint use of stations. Where two railway companies agree to use a station jointly, it seems that it would be in the power of the Court of Chancery to prescribe rules for the use of the station, and to direct a partition and the appointment of a receiver, unless there be a provision for reference to arbitration, in which case the Court will not interfere until such reference has been made: (*Shrewsbury, &c., Railway Co. v. Chester, &c., Railway Co.*, 14 L. T. 217, 433.)

Reference to arbitration. As to the power of arbitrators to regulate the transmission of traffic, where the special act prescribes a reference to arbitration to determine disputes, see *Eastern Union Railway Co. v. Eastern Counties Railway Co.*, 2 El. & Bl. 530.

Reference to arbitration to determine transmission of traffic. It does not appear to be unlawful for one of two companies to enter into competition with the other, by providing omnibuses to carry passengers from the station: (*Shrewsbury, &c., Railway Co. v. Stour Valley Railway Co.*, 2 De G. M. & G. 866.) And see further as to the joint use of stations, *Midland Railway Co. v. Ambergate Railway Co.*, 10 Hare, 359; and as to the terms which arbitrators may impose with regard to the joint use of stations, see *Eastern Union Railway Co. v. Eastern Counties Railway Co.*, 2 El. & Bl. 530.

Contracts not to affect persons not parties thereto. LXXXVIII. Provided always, That no such contract as aforesaid shall in any manner alter, affect, increase, or

diminish any of the tolls which the respective companies, ^{8 & 9 Vict. c. 20.} parties to such contracts, shall for the time being be respectively authorised and entitled to demand or receive from any person or any other company, but that all other persons and companies shall, notwithstanding any such contract, be entitled to the use and benefit of any of the said railways, upon the same terms and conditions, and on payment of the same tolls, as they would have been in case no such contract had been entered into.

LXXXIX. Nothing in this or the special act contained shall extend to charge or make liable the company further or in any other case than where, according to the laws of the realm, stage-coach proprietors and common carriers would be liable, nor shall extend in any degree to deprive the company of any protection or privilege which common carriers as stage-coach proprietors may be entitled to; but, on the contrary, the company shall at all times be entitled to the benefit of every such protection and privilege.

Company not to be liable to a greater extent than common carriers.

LIABILITY OF COMPANY AS CARRIERS OF PASSENGERS.

The liability of railway companies as carriers of passengers differs materially from their liability as carriers of goods. As carriers of goods—[See *post*, p. 418, *et seq.*—]they are insurers against all injuries, except such as result from the act of God or the king's enemies; but as carriers of passengers their obligation is only to use all due care and diligence to ensure the safety of passengers, and they are responsible for those injuries only which result from negligence on the part of themselves or their servants: (Story on Bailments, p. 620; *Aston v. Heaven*, 2 Esp. 533; *Christie v. Griggs*, 2 Camp. 79; *Crofts v. Waterhouse*, 3 Bing. 319.)

Distinction between liability of company as carriers of passengers and as carriers of goods.

It was at one time thought unnecessary, in order to make the company liable, to prove that the injury was caused by their negligence, as that would be presumed *prima facie* from the occurrence of the injury: (*Christie v. Griggs*, *ubi supra*; *Sharp v. Grey*, 9 Bing. 457; *Carpue v. London and Brighton Railway Co.*, 5 Q. B. 747;) and in some cases this is still so where *res ipsa loquitur*, as where the injury arises from a collision of different trains on the same line: (See *per* Pollock, C. B., *Bird v. Great Northern Railway Co.*, 28 L. J. (Ex.) 3; cf. *Byrne v. Boadle*, 33 L. J. (Ex.) 13; and *Scott v. London Dock Co.*, 13 W. R. 99.)

Responsible only for injuries caused by negligence.

But, except in such a case as that last referred to, the contrary doctrine seems now to be well established: (*Bird v. Great Northern Railway Co.*, *ubi supra*; *Toomey v. London, Brighton, and South Coast Railway Co.*, 3 C. B. N. S. 146; 27 L. J. (C. P.) 39; *Cornman v. Eastern Counties Railway Co.*, 4 H. & N. 781; 29 L. J. (Ex.) 94; *Martin v. Great Northern Railway Co.*, 16 C. B. 179.)

Negligence not now presumed from mere occurrence of injury.

S & 9 Vict. c. 20.

However, where a train of the defendants, whilst stationary on their railway, was run into by another train, the train in fault being the moving and not the stationary one; several railway companies having running powers over the part of the defendants' line on which the collision occurred, and no evidence being given as to whether the moving train belonged to or was under the control of the defendants, it was held that, in the absence of evidence to the contrary, it must be presumed that the train which caused the collision belonged to or was under the control of the defendants: (*Ayles v. South-Eastern Railway Co.*, L. R. 3 Ex. 146.)

Injury caused
by some ex-
traordinary oc-
currence.

If the injury to the passenger result from some extraordinary occurrence, the company will not be held liable. Thus, where the embankment of a railway ran through a country subject to floods, and had five years previously been constructed of sandy soil, with insufficient culverts to carry off water; and an extraordinary fall of rain had caused a flood, which had washed away the soil or part of the embankment, leaving the "sleepers" unsupported, so that the earth gave way, and the train, an express one, passing over it at night at the ordinary express rate, went off the line; there being no evidence that the water was seen on the line, or that there had been anything to indicate danger, and no engineer or skilled witness having been called to prove that the nature of the soil of the embankment was such that water would wash it away in ordinary floods, it was held that there was no evidence of negligence, or so little that the verdict (which had been found for the plaintiff) was against the weight of evidence: (*Withers v. North Kent Railway Co.*, 27 L. J. (Ex.) 417.)

So in two similar cases, decided by the Privy Council on appeal from Canada, (*Great Western Railway Co. of Canada v. Fawcett*; *same company v. Braid*, 9 Jur. N. S. 339; 1 Moore, P. C. N. S. 101,) where the injuries to passengers resulted from the giving way of a portion of the company's railway, caused by a storm of unusual violence, Lord Chelmsford, in delivering the judgment of the Privy Council, said: "The defence in both cases was substantially the same, being founded upon proof of the proper construction of the railway, of the daily inspection of the line, and of the violence of the storm of rain which carried away the embankment. As far as we can collect from the learned judge's note of his charge to the jury, he does not appear, in *Fawcett's* case, to have adverted to the company's defence arising from the extraordinary and unforeseen state of the weather immediately before the accident; nor, in *Braid's* case, to have mentioned it otherwise than in an incidental manner. In neither case does he appear to have explained to the jury the effect which would be produced upon the question of negligence, by satisfactory proof that the storm which destroyed the embankment was of such an extraordinary description that no experience could have anticipated its occurrence. Their Lordships think that the jury should have had their minds distinctly and pointedly directed to this question, and that without some definite instruction upon the subject, they were likely to have omitted it from their consideration." In these cases, however, their Lordships refused to order a new trial, as they were of opinion that there was

sufficient evidence of negligence to support the verdicts which had s & 9 Vict. c. 20. been found in favour of the respondents.

In *Withers v. North Kent Railway Co.* (*ubi supra*), Bramwell, B., says—"Negligence must be shown by the plaintiff. It is not enough to show that an accident arose from certain extrinsic or external causes; where is the evidence of negligence? . . . So far from there being any evidence to show that there was negligence, there was evidence to negative the negligence imputed. The very existence of the line for five years, notwithstanding that the district was subject to floods, tended to negative the only negligence that was set up."

In the cases before the Privy Council, cited above, Lord Chelmsford, after referring to these remarks of Bramwell, B., and pointing out the difficulty of reconciling them with the language of the same learned judge in *Ruck v. Williams*, 27 L. J. (Ex.) 357, says—"Their Lordships, without attempting to lay down any general rule upon the subject, which would probably be found to be impracticable, think it sufficient for the purpose of their judgment, in these cases, to say that the railway company ought to have constructed their works in such a manner as to be capable of resisting all the violence of weather which in the climate of Canada might be expected, though perhaps rarely, to occur. Now the whole of the evidence, fairly considered, shows nothing beyond this in the character and degree of the storm which destroyed the embankment."

If everything that reasonable care and skill can do to ensure the Roadworthiness of carriages. safety of passengers has been done by the company, they will not be held responsible for injuries caused by such a defect in their carriages, as could neither be guarded against in the process of construction, nor discovered by subsequent examination: (*Redhead v. Midland Railway Co.*, L. R. 2 Q. B. 412. *Dissentiente* Blackburn, J.) As the law at present stands, the obligation on railway companies to provide vehicles roadworthy at the commencement of the journey, is not an absolute one; and provided they have been guilty of no negligence, they will not be held liable for injuries caused by a latent defect in the construction of their carriages: (*Ibid.*) The case, however, in which a majority of the Court of Queen's Bench so decided, is now pending before a Court of Appeal. In the judgments in *Redhead v. Midland Railway Co.*, most of the earlier cases on the subject of the liability of carriers of passengers will be found referred to.

Where, on the arrival of a train at a railway station, some of the passengers had to alight on the line beyond the platform, there not being room for all the carriages to be drawn up to the platform, and one passenger, a lady, being desired by the porter to alight at a spot a little below the platform, in alighting jumped to the ground, without availing herself of the second of the two steps, and sustained personal injury, it was held that there was evidence to warrant the finding of the jury that the company were guilty of negligence in not providing reasonable means of alighting: (*Fry v. London, Brighton, and South Coast Railway Co.*, 18 C. B. N. S. 225; 11 L. T. N. S. 606; 13 W. R. 293.)

But if under similar circumstances a passenger alights without

3 & 9 VICT. c. 20. being invited to do so by any of the company's officers, and in so doing sustains injury, the company will not be responsible: (*Siner v. Great Western Railway Co.*, L. R. 3 Exch. 150.)

Bridge negligently constructed.

Where a railway company, for the more convenient access for passengers between the two platforms of a station, erected across the line a wooden bridge, which the jury found to be dangerous, it was held that the company were liable for the death of a passenger, through the faulty construction of this bridge, although there was a safer one about a hundred yards farther round, which the deceased might have used: (*Longmore v. Great Western Railway Co.*, 19 C. B. N. S. 183; see also *Nicholson v. Lancashire and Yorkshire Railway Co.*, 3 H. & C. 534; 34 L. J. (Exch.) 84; 12 L. T. N. S. 391.)

Where a plaintiff fell upon a staircase of a railway company, which had a wall on each side, and the only allegations of negligence were that there were no handrails, and that the stairs, owing to their being nosed with brass, were slippery, it was held that there was no evidence of negligence to be laid before the jury: (*Crafter v. Metropolitan Railway Co.*, L. R. 1 C. P. 300; 35 L. J. (C. P.) 132; 12 Jur. N. S. 272; 14 W. R. 334.)

Where a passenger was injured by the fall of an iron girder, through the negligence of the workmen employed by a contractor in placing it across the retaining walls of the railway; evidence that the work in question was extremely dangerous; that it was the practice when such work was being done across railways, for the company to place a man to signal to the workpeople the approach of a train, and that this precaution was not adopted, was held by the Court of Common Pleas sufficient, but by the Court of Exchequer Chamber (on appeal) not sufficient to warrant the jury in finding that the defendants were guilty of negligence: (*Daniel v. Metropolitan Railway Co.*, L. R. 3 C. P. 216, 591.)

Where a railway porter in closing the door of a compartment, so as to touch a passenger who had just got inside, crushed the fingers of a child, (who was just seating himself,) between the hinges, it was held by the Court of Exchequer, (*dissentiente Kelly, C. B.*) that there was evidence of negligence to support a finding of the jury in favour of the plaintiff: (*Coleman v. South-Eastern Railway Co.*, 4 H. & C. 699; 12 Jur. N. S. 944; and see *Fordham v. London, Brighton, and South Coast Railway Co.*, L. R. 3 C. P. 368.)

Injured person travelling free.

The fact that the person injured was at the time travelling free as one of a staff of newspaper reporters, does not exonerate the company from liability to compensate him for the injuries sustained: (*Great Northern Railway Co. v. Harrison*, 10 Exch. 379.) In this case the name of a reporter other than the one injured, belonging to the same newspaper was written upon the ticket, which purported on the face of it not to be transferable, and contained also on it a memorandum to the effect that any party other than the person named in it, using the pass, would be liable to the penalty which a passenger incurs by travelling without having paid his fare, or that he would be liable to pay the fare; and the question arose, whether under these circumstances, the person injured could be said to have been "lawfully" in the railway carriage at the time of the injury. The Court held that he was "lawfully" in the carriage at the time; it appearing that he had shown the ticket to the porter whose busi-

ness it was to examine the tickets, and who said it was all right, s & 9 Vict. c. 20. that he had been placed in the carriage by that porter, to whom he was personally known, and that the plaintiff, as well as other reporters known to the company's servants, had on several previous occasions travelled with similar tickets, not bearing the names on them of those who used them: (*Ibid.*)

Where a mother carried in her arms a child two months over the age at which children are carried free of charge, without taking a ticket for the child, not being asked at the time the age of her child, and not intending to defraud the company, it was held that the child was entitled to recover against the company for injury sustained from a collision caused by the negligence of the company's servants: (*Austin v. Great Western Railway Co.*, L. R. 2 Q. B. 442; 36 L. J. (Q. B.) 201; 15 W. R. 863; 16 L. T. N. S. 320.) Child over three years travelling without ticket.

Where the train by which a person was travelling when injured had been hired from the railway company by a benefit society, for an excursion, the tickets for which were sold and distributed by the treasurer of the society, from whom the plaintiff purchased one, it was held that there was evidence for the jury that the plaintiff was a passenger to be carried by the defendants: (*Skinner v. London, Brighton, and South Coast Railway Co.*, 5 Exch. 787.) Excursion train hired from the company.

Before the statute, 9 & 10 Vict. c. 93, (Lord Campbell's Act,) if the person injured died from the effects of the injuries sustained, no action could be maintained, the rule of law being *actio personæ moritur cum personâ*. Where death is caused by injuries received.

S. 1 of that act provides "that whensoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony." 9 & 10 Vict. c. 93, s. 1.

S. 2 enacts "that every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict shall find and direct." S. 2. For whose benefit, and by whom action is to be brought.

By s. 2 of 27 & 28 Vict. c. 95, the money paid into Court may be paid in one sum, without regard to its division into shares; and if it be not accepted and the jury think it sufficient, the defendant is to be entitled to the verdict on that issue.

S. 3 provides "that not more than one action shall lie for and in respect of the same subject-matter of complaint, and that every such action shall be commenced within twelve calendar months after the death of such deceased person." S. 3. Only one action to lie. Time of commencement.

8 & 9 Vict. c. 20.

Where no action brought within six months by executor, action may be brought by persons beneficially interested in result of action.

S. 1 of 27 & 28 Vict. c. 95 enacts as follows: "If and so often as it shall happen at any time or times hereafter, in any of the cases intended and provided for by the said act, [9 & 10 Vict. c. 93.] that there shall be an executor or administrator of the person deceased, or that there being such executor or administrator, no such action as in the said act mentioned shall, within six calendar months after the death of such deceased person as therein mentioned, have been brought by and in the name of his or her executor or administrator, then and in every such case such action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit such action would have been, if it had been brought by and in the name of such executor or administrator; and every action so to be brought shall be for the benefit of the same person or persons, and shall be subject to the same regulations and procedure, as nearly as may be, as if it were brought by and in the name of such executor or administrator."

As to the particulars to be delivered, along with the declaration, and the interpretation of the terms in the act, see ss. 4 and 5 of the act (9 & 10 Vict. c. 93) in the Appendix, *post*.

Illegitimate child.

An action cannot be maintained under this statute on behalf of an illegitimate child of the deceased, a bastard not being a "child" within the meaning of s. 2: (*Dickinson v. North-Eastern Railway Co.*, 2 H. & C. 735; 33 L. J. (Ex.) 91.)

Contributory negligence.

The Legislature intended by this statute to give an action to the representative of a person killed by negligence only when, had he survived, he himself, at the common law, could have maintained an action against the person guilty of the alleged negligence: (*Per Lord Campbell, Senior v. Ward*, 28 L. J. (Q. B.) 139; 1 E. & E. 385.) Therefore if it be shown at the trial, that the deceased by his own negligence or carelessness contributed to the accident which caused his death, the defendant would be entitled to a verdict: (*Tucker v. Chaplin*, 2 Car. & K. 730. See further, *Walton v. London, Brighton, and South Coast Railway Co.*, 14 W. R. 424; 14 L. T. N. S. 253; *Coleman v. South-Eastern Railway Co.*, 12 Jur. N. S. 944; 4 H. & C. 699; *Stelton v. London and North-Western Railway Co.*, L. R. 2 C. P. 631; 36 L. J. (C. P.) 249; 16 L. T. N. S. 563; 15 W. R. 925; *Paddock v. North-Eastern Railway Co.*, 16 L. T. N. S. 639.)

On the part of an infant.

And contributory negligence on the part of an infant has the same effect in disentitling him to maintain an action as in the case of an adult: (*Abbott v. Macfie*, 2 H. & C. 744; 33 L. J. (Ex.) 177. Cf. *Coleman v. South-Eastern Railway Co.*, 4 H. & C. 699; 12 Jur. N. S. 944.)

Where person has accepted satisfaction in his lifetime.

If the person injured has in his lifetime accepted a sum of money in full satisfaction and discharge of all the claims and causes of action he had against the company, his executor cannot maintain an action after his death in respect of the injury done to the widow and children of the deceased: (*Read v. Great Eastern Railway Co.*, L. R. 3 Q. B. 555; 18 L. T. N. S. 82; 16 W. R. 1040.)

What is sufficient damage to sustain action.

The loss of a reasonable probability of pecuniary benefit from the continuance of the life of the deceased is a sufficient damage to sustain an action under this statute: (*Pym v. Great Northern Railway Co.*, 4 B. & S. 396; 32 L. J. (Q. B.) 377. See also *Dalton v. South-Eastern Railway Co.*, 4 C. B. N. S. 296; 27 L. J. (C. P.) 227;

Franklin v. South-Eastern Railway Co., 3 H. & N. 211; 29 L. J. 8 & 9 Vict. c. 20. (Ex.) 25; *Riley v. Baxendale*, 30 L. J. (Ex.) 87.)

The remedy given by the statute is to *individuals*, not to a *class*; and therefore in an action to recover damages for the death of a person whose income arose from land and personalty, independent of any exertion of his own, and no portion of which was lost to his family by his death, it was held that the jury had to look separately to the interests of the respective members of the family, and that the action on their behalf was maintainable if, in consequence of the death, the mode of distribution of the income among the members of the family was changed: (*Pym v. Great Northern Railway Co.*, *ubi supra*.)

The case last referred to shows also that compensation may be obtained by the representative of the deceased for damage which would not have resulted to the deceased himself had he lived.

In an action under Lord Campbell's Act the jury, in estimating damages, must give compensation for pecuniary loss only; they cannot take into consideration mental suffering or loss of society: (*Blake v. Midland Railway Co.*, 18 Q. B. 93;) nor can they award compensation for expenses incurred for the funeral and family mourning.

The railway company with which the passenger contracts to carry him is responsible for injuries sustained by him on the line of another company, with which the former company has made an arrangement for the carriage of passengers: See *Great Western Railway Co. v. Blake*, 7 H. & N. 987; 31 L. J. (Ex.) 346. "That case decides, that where a railway company contracts with a passenger to carry him from one terminus to another, and on the journey the train has to pass over the line of another railway company, the company issuing the ticket incurs the same responsibility as that other company over whose line the train runs, and by whose default the accident happens, would incur if the contract to carry had been entered into with them:" (*Per Blackburn, J., Buxton v. North-Eastern Railway Co.*, L. R. 3 Q. B. 549; 18 L. T. N. S. 795; 16 W. R. 1124.)

By 27 & 28 Vict. c. 195, s. 134, the London, Chatham, and Dover Railway Company are bound to run cheap trains for the working-classes, and by s. 137 the liability of the company for injuries is limited to the sum of £100. S. 137 enacts that "the liability of the company under any claim to compensation for injury or otherwise in respect of each passenger travelling with such ticket as aforesaid [for the cheap trains] shall be limited to a sum not exceeding one hundred pounds, and the amount of compensation payable in respect of any passenger so injured shall be determined by an arbitrator to be appointed by the Board of Trade, and not otherwise." Similar provisions are contained in several other acts, as "The Metropolitan Railway (Notting Hill and Brompton Extension) Act, 1864," 27 & 28 Vict. c. 291, ss. 45, 46; "The Great Eastern Railway (Metropolitan Station and Railways) Act, 1864," 27 & 28 Vict. c. 313, ss. 80, 83; "The Metropolitan Railway (Tower Hill Extension) Act, 1864," 27 & 28 Vict. c. 315, s. 25; "The North-Western and Charing Cross Railway Act, 1864," 27 & 28 Vict. c. 323, ss. 92, 95.

Where a servant who sustains an injury whilst travelling on a railway has himself taken the ticket, his master cannot maintain an action against the railway company for the loss of his servant's

Compensation for damage which would not have resulted to deceased.

Damages to be given for pecuniary loss only.

Liability for negligence of servants of another company.

Limitation of liability in cases of cheap trains for the working-classes.

Master's right to recover damages for injury to his servant.

8 & 9 VICT. C. 20. services through their negligence; the injury resulting not from a simple wrong, but from a wrong arising out of a breach of duty imposed on the company by their contract with the servant, and the action being therefore one founded on contract: (*Alton v. Midland Railway Co.*, 19 C. B. N. S. 213; 34 L. J. (C. P.) 292; 13 W. R. 918.)

Criminal liability of railway servants. If the death of a passenger be caused wholly or partly by the negligence of a servant of the company, the servant is guilty of manslaughter. If the passenger's death is occasioned by the neglect of several, they are all guilty of manslaughter: (*Reg. v. Ledger*, 2 F. & F. 857, the case of a station-master who started one train after another in less than the prescribed time; *R. v. Trainer*, 4 F. & F. 105; and see 1 Russ. on Crimes, 877, 878.)

Injuries sustained by servants of the company. As to injuries sustained by servants of the company, the general rule of law is thus laid down in Smith's Law of Master and Servant, pp. 134, 135: "Inasmuch as a servant, when he engages to serve a master, impliedly undertakes as between himself and his master to run all the ordinary risks of the service, (including the risk of negligence on the part of a fellow-servant when he is acting in the discharge of his duty as servant of him who is the common master of both,) the master is not in general bound to indemnify him against the consequences of injuries sustained in the ordinary discharge of the duties for which he was hired; that is, at least, if the master provide competent fellow-servants, and tackle and machinery reasonably proper and adapted to the work in hand:" (See *Priestley v. Fowler*, 3 M. & W. 1; *Winterbottom v. Wright*, 10 M. & W. 109; *Brown v. Mullett*, 5 C. B. 599, 616; *Seymour v. Maddox*, 16 Q. B. 326; 20 L. J. (Q. B.) 327; *Edwards v. London and Brighton Railway Co.*, 4 F. & F. 530.)

Therefore if a servant of the railway company whilst engaged in their service is killed by a collision on the line due to the negligence of other servants of the company, the representatives of the deceased cannot maintain an action against the company under Lord Campbell's Act: (*Hutchinson v. York, &c., Railway Co.*, 5 Exch. 343; 19 L. J. (Exch.) 296. Cf. *Skipp v. Eastern Counties Railway Co.*, 9 Exch. 223; 23 L. J. (Exch.) 23; *McEniry v. Waterford and Kilkenny Railway Co.*, 8 Ir. C. L. Rep. 312; and *Wilson v. Merry*, 1 L. R. 3 App. 326.)

Person voluntarily assisting company's servants. And the same principle would apply to the case of a person injured whilst voluntarily assisting the servants of the company: (*Degg v. Midland Railway Co.*, 1 H. & N. 773; 26 L. J. (Exch.) 171.)

Injury caused not by negligence of fellow-servant. If, however, the injury is caused not by the negligence of the company's servants, but by something defective in the arrangements made by the company, the company will be held responsible. Thus where a workman in the employ of one railway company was engaged in repairing their carriages upon a siding belonging to another company, but in the joint occupation of both companies, and was placed between carriages so that he could not see what might be coming, and was necessarily making a noise at his work, so that he could not hear, and an engine belonging to the other company came up into the siding and drove the carriages together, so that he was crushed between them and killed; and the jury found that the company to whom the engine belonged were guilty of negligence, by reason that their rails were defective, and that neither the deceased nor his fellow-servants were so, it was held that his representative

could maintain an action against that company for compensation 8 & 9 VICT. c. 20. under Lord Campbell's Act: (*Vose v. Lancashire and Yorkshire Railway Co.*, 2 H. & N. 728; 27 L. J. (Exch.) 249.)

The following have been held to be "fellow-servants" within the application of the principle of law quoted above from Smith's Law of Master and Servant. A labourer employed by a railway company to assist in filling trucks with ballast from a ballast pit, and platelayers, whose duty it was, under the superintendence of the company's foreman, to shift the tramway from time to time, as the ballast was got away from the pit: (*Lovegrove v. London, Brighton, and South Coast Railway Co.*, 33 L. J. (C. P.) 329;) a person employed as a carpenter and joiner in painting an engine-shed, near which was a turn-table, and the servants of the company employed in managing the traffic: (*Morgan v. Vale of Neath Railway Co.*, 33 L. J. (Q. B.) 260;) a railway guard and the "ganger" of the platelayers, who was employed to keep the permanent way in proper repair and condition: (*Waller v. South-Eastern Railway Co.*, 2 H. & C. 102; 32 L. J. (Exch.) 205; 9 Jur. N. S. 501.)

Examples of
"fellow-ser-
vants."

It is not within the scope of a station-master's authority to bind the company by a contract for surgical assistance to be rendered to an injured passenger: (*Cox v. Midland Railway Co.*, 3 Exch. 268; 5 R. C. 583; but see *Walker v. Great Western Railway Co.*, L. R. 3 (Ex.) 228; 15 W. R. 769; 36 L. J. (Ex.) 123.)

The time-tables issued by a railway company have been held to amount to a contract on behalf of the company with those persons who should come to the station, to forward them as stated in the tables: (By Lord Campbell, C. J., and Wrightman, J.: *dissentiente*, Crompton, J., *Denton v. Great Northern Railway Co.*, 5 El. & Bl. 860; 25 L. J. (Q. B.) 129.)

Time-tables: how
far company are
bound by.

Where a railway company, whose line communicated with that of another company, had arrangements by which their train, starting at 7 P.M., should meet at a certain point, a train of the latter company by which passengers should be forwarded, and at the end of a month, after the time-tables for the next month of the former company had been printed but not published, the latter company discontinued the particular train referred to, notwithstanding which the former company published the time-tables without alteration, and circulated them, knowing that there was no such train, it was held that a plaintiff who had seen one of these time-tables, and made his arrangements on the faith of it to go by the 7 P.M. train, and did not learn the fact of the alteration until he had arrived at the company's station, was entitled to recover against the company for damage sustained, on the ground that the circulation of the time-tables amounted to a representation on the part of the defendants that there was a train, which was false to the knowledge of those making it, and calculated to induce the petitioner to act as he did: (*Ibid.*, *per totam curiam*.)

Where a person took an excursion ticket from B. to L., "to return by the trains advertised for that purpose, on any day not beyond fourteen days after date" thereof, and not being able to get a place in one of the ordinary trains back from L. to B., came by a train which stopped at D., an intermediate station, from which no trains ran that day (Sunday) to B., he was held entitled to recover

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§ 9 VICT. C. 20. from the company the expenses of posting by hired carriage from D. to B.: (*Great Northern Railway Co. v. Hawcroft*, 21 L. J. (Q. B.) 178; 18 L. T. 288; 16 Jur. 196.)

What damages can be recovered. A person delayed by default of the company, in such cases as the above, is entitled to recover only the expenses actually incurred by him owing to the delay; he cannot recover damages for not being able to keep business engagements at the place to which he was going: (*Hamlin v. Great Northern Railway Co.*, 1 H. & N. 408; 26 L. J. (Ex.) 20.) "Each case of this description," says Pollock, C. B., "must be decided with reference to the circumstances peculiar to it; but it may be laid down as a rule, that generally in actions upon contracts no damages can be given which cannot be stated specifically, and that the plaintiff is entitled to recover whatever damages naturally result from the breach of contract, but not damages for the disappointment of mind occasioned by the breach of contract;" (*Ibid.*)

Notice that company do not guarantee exact time of arrival or departure. Since the decision in *Denton v. Great Northern Railway Co.*, railway companies have protected themselves by inserting a notice in their time-bills to the effect that they do not guarantee the arrival or departure of the trains at the exact time stated in the time-bill, but will do their best to insure punctuality: (*Per Willes, J., Hurst v. Great Western Railway Co.*, 19 C. B. N. S. 315, 316.)

The mere taking of a ticket for a journey by railway does not amount to a contract on the part of the railway company, or impose upon them a duty to have a train ready to start at the time at which the passenger is led to expect it: (*Hurst v. Great Western Railway Co.*, 19 C. B. N. S. 310; 34 L. J. (C. P.) 264; 13 W. R. 950; 12 L. T. N. S. 634.)

Thus when a person took a ticket at Cardiff to be carried by the Great Western Railway Co. to Newcastle-upon-Tyne, by a train from Milford, which should arrive at Cardiff at 4.34, proceeding thence to Gloucester, where it joins the mail-train from Bristol to Newcastle, but the train did not reach Cardiff till six o'clock, when the train to Gloucester had started, and so he was compelled to wait till next day; in an action against the company, the plaintiff, not having put in evidence the time-tables, but relying on the ticket for his conveyance "from Cardiff to Newcastle *via* Midland Railway," and on certain information given by the officers of the company, it was held that no contract or duty was proved whereby the company was bound to have their train at Cardiff in time to enable petitioner to travel by Gloucester train to Newcastle: (*Ibid.*)

In a case where the time-tables of a company contained a notice that "every exertion will be used to ensure punctuality, but the departure or arrival of trains at the time stated will not be guaranteed, nor will the company hold themselves responsible for delay, or any consequences arising therefrom;" and the jury, in answer to questions from the judge, found that a delay which had occurred was owing to no negligence or want of care on the part of the company, it was held by Crompton, J., at *nisi prius*, that no contract or duty had been proved by which the company could be made liable: (*Prevost v. Great Eastern Railway Co.*, 13 L. T. N. S. 20.)

PASSENGERS' LUGGAGE.

8 & 9 VICT. C. 23

It seems now to be an established doctrine that the responsibility of all carriers of passengers with their luggage stands, as to the luggage, upon the ordinary footing of common carriers: (Story on Bailments, p. 324; *Clarke v. Gray*, 6 East, 564; *Brooke v. Pickwick*, 4 Bing. 218; *Bennett v. Peninsular and Oriental Steamboat Co.*, 6 C. B. 782; 6 D. & L. 387; but see *per Pollock, C. B.*, in *Stewart v. London and North-Western Railway Co.*, 33 L. J. (Exch.) 199.)

General rule as to responsibility for luggage.

"The duty of common carriers, by the common law, is perfectly well understood; it is a warranty safely and securely to carry; whether they be guilty of negligence or not, is immaterial; the warranty is broken by the non-conveyance or non-delivery of the goods intrusted to them:" (*Per Wilde, C. J.*, *Richards v. London, Brighton, and South Coast Railway Co.*, 7 C. B. 858; S. C. 18 L. J. (C. P.) 251; 6 R. C. 49.) An allegation of negligence contained in the declaration, being the insertion of superfluous matter, will not affect the petitioner's right to recover: (*Ibid.*)

Negligence not necessary to be shown.

Under the term luggage may be comprised the passengers' clothing, and everything required for his personal convenience, and perhaps even a small present, or a book, might also be included in that term, but not merchandise or materials intended for trade: (*Per Parke, B.*, *Great Northern Railway Co. v. Shepherd*, 8 Exch. 38; 21 L. J. (Exch.) 114.)

What is luggage.

If the railway company have notice, or have reason to suspect, from the mode in which parcels are packed, that they do not contain personal luggage, it is their duty to object to carry them without payment of the proper charge: (*Ibid.*)

Company must have notice of goods not being personal luggage.

But the mere fact that a package looks like merchandise, and is marked "glass," is not enough to fix the railway company with notice and consequent liability for loss: (*Cahill v. London and North-Western Railway Co.*, 10 C. B. N. S. 154; 30 L. J. (C. P.) 289; 31 L. J. (C. P.) 271. See also *Belfast, &c., Railway Co. v. Keys*, 9 H. L. 556; 8 Jur. N. S. 367.)

Ordinary luggage, for which a railway company is responsible, does not include title-deeds belonging to a client, which an attorney is carrying with him in his bag or portmanteau, for the purpose of producing on a trial in a local court, or bank notes, (to a considerable amount,) carried by him for the purpose of meeting the exigencies or contingencies of the case: (*Phelps v. London and North-Western Railway Co.*, 19 C. B. N. S. 321; 34 L. J. (C. P.) 259; 13 W. R. 782; 12 L. T. N. S. 496.)

If each passenger is allowed to carry half a hundred-weight of luggage, it seems that a husband and wife travelling together are entitled to carry one hundred-weight of luggage between them: (*Great Northern Railway Co. v. Shepherd*, 8 Exch. 30; 21 L. J. (Exch.) 114; in which case the personal luggage of the wife did not exceed 3lbs.)

Amount of luggage—husband and wife.

A railway company is liable to an action by a servant for the loss of his luggage, although his master, with whom he travels, have paid for the servant's ticket: (*Marshall v. York, &c., Railway Co.*, 11 C. B. 635; 21 L. J. (C. P.) 34; 16 Jur. 124.) As the liability of the

Luggage of servant whose fare was paid by his master

8 & 9 VICT. c. 20. company arises, not from contract, but from the common law duty to carry the goods safely, it is immaterial by whom the reward to the company is to be paid; for the duty would equally arise, although the payment was by a stranger: (*Ibid.*)

If, in such a case as that last mentioned, the allegation in the declaration imports that the payment is to be made *by the plaintiff*, it seems that the payment by the master on behalf of the servant would be held to be a payment by the servant himself: (*Ibid.*)

How long liability of railway company continues.

Where the company employ porters at their stations to convey passengers' luggage from the railway carriages to the carriages or hired vehicles of the passengers, the liability of the company as carriers continues until the porters have discharged their duty: (*Richards v. London, Brighton, and South Coast Railway Co.*, 7 C. B. 839; 18 L. J. (C. P.) 251; 6 R. C. 49.)

Luggage kept by passenger in his own possession during journey.

The fact that the passenger takes his luggage into the carriage with him, and keeps it in his possession till the arrival of the train at the station, does not exonerate the railway company from liability for a loss subsequently occurring, whilst a porter of the company was placing a portion of it on a cab: (*Butcher v. London and South-Western Railway Co.*, 16 C. B. 13; see *Midland Railway Co. v. Bromley*, 17 C. B. 372; 25 L. J. (C. P.) 94; and *Gilbart v. Dale*, 5 A. & E. 543; *Le Couteur v. London and South-Western Railway Co.*, 35 L. J. (Q. B.) 40; 14 W. R. 80; 13 L. T. N. S. 325.) Though the luggage be kept by the passenger during the journey, it is nevertheless in point of law in the custody of the company, so as to render them responsible for its loss: (*Great Northern Railway Co. v. Shepherd*, *ubi supra.*)

Luggage not addressed.

Even where no address was marked on the luggage, but a porter of the company took possession of it, and was informed of its destination, it was held by the Scotch Court of Session that the company were liable for its loss, notwithstanding the passenger's carelessness: (*Campbell v. Caledonian Railway Co.*, 14 C. of Sess. Ca., 2 ser. 806.)

Excursion trains.

In some cases where excursion trains are run, no luggage is allowed to be carried by the passengers; in other cases a certain quantity of luggage is allowed to be carried "free, at passengers' own risk." In the former case, if a passenger carries luggage, the company may detain it until he pays the amount which they are entitled to charge for it: (*Rumsey v. North-Eastern Railway Co.*, 14 C. B. N. S. 641; 32 L. J. (C. P.) 244; 8 L. T. N. S. 666.) In the latter case the company will not be held liable for the loss of luggage carried by a passenger who had the means of knowing of the condition, even though he did not in fact know of it: (*Stewart v. London and North-Western Railway Co.*, 3 H. & C. 135; 33 L. J. (Exch.) 199;) and s. 7 of the Railway and Canal Traffic Act (17 & 18 Vict. c. 31) does not apply to such a case: (*Ibid.*)

Effect of bye-law limiting company's liability.

Where, by a section of the act constituting a railway company, the company were to allow passengers to carry articles of clothing of a certain weight without extra charge, and were not to be responsible for anything carried with passengers except such articles of clothing, a bye-law made by the company, that every first-class passenger should be allowed to carry 112 lbs. of luggage free of charge, but that the company would not be responsible for the care of the same, unless booked and the carriage thereof paid

for, was held to be void, as in contravention of the section of their 8 & 9 VICT. c. 20. act of parliament: (*Williams v. Great Western Railway Co.*, 10 Exch. 15; see also *Great Western Railway Co. v. Goodman*, 12 C. B. 313; 21 L. J. (C. P.) 197.)

Where an article, deposited in the cloak-room of a railway company, exceeds £10 in value, a notice on the ticket given to the depositor, that "the company will not be responsible for any package exceeding the value of £10," protects the company from liability, not only for the loss of such an article, but also for delay in delivering it, at least where the delay is caused by no wilful act or default of the company, and without their privity or knowledge: (*Pepper v. South-Eastern Railway Co.*, 17 L. T. N. S. 469.)

A clause in a written contract by a railway company for the conveyance of troops and their baggage, that "the baggage shall remain in charge of a guard provided by the troops, the company accepting no responsibility," was held to operate only as a limited, and not as a general, exemption of the company from responsibility for loss or damage happening through a fire caused by their own negligence or wilful default: (*Martin v. Great Indian Peninsular Railway Co.*, L. R. 3 Ex. 9; 37 L. J. (Ex.) 26; 17 L. T. N. S. 349.)

Where plaintiff and his baggage were carried by a railway company, under a contract with the Indian Government, and whilst being so carried his baggage was destroyed by the company's negligence, it was held that, although the petitioner could not sue the company for non-performance of their duty as carriers, he was entitled to sue for an injury done to his property through their negligence whilst the baggage was in their custody: (*Ibid.*)

Where the plaintiff arrived in London by the defendant's railway on Saturday evening, left a portmanteau at the cloak-room, and on paying 2d. received a ticket acknowledging the receipt, with a notice that the company would not "deliver luggage except to persons producing the proper receipt," and on Sunday evening, intending to leave London by another railway, came for his portmanteau and found the office shut, and in seeking a porter to open it, was delayed forty minutes, and was also prevented from leaving London by the other railway that night; in an action for not re-delivering the portmanteau within a reasonable time, the jury having found for the plaintiff, it was held by the Court of Queen's Bench that the defendants were bound to deliver up the portmanteau on Sunday as well as on other days, on a reasonable request and within a reasonable time, and that whether there had been an unreasonable delay was a question for the jury: (*Stallard v. Great Western Railway Co.*, 2 B. & S. 419; 31 L. J. (Q. B.) 137.)

The Carriers Act, 1 Will. IV. c. 68, by s. 1, protects carriers from liability for "the loss of or injury to" any of a number of articles therein enumerated, [see the section in the Appendix,] if above the value of £10, unless delivered to the company as such, and the increased charge accepted. The words "loss of or injury to" have been held not to apply to a loss sustained by the owner in consequence of the non-delivery of the article in due time or altogether, or the loss of the use of the article by him, but only to the loss by the carrier of the articles committed to him, or

Soldiers' baggage carried under contract with Government.

Re-delivery of luggage deposited at cloak-room.

Loss of or injury to" luggage within s. 1 of the Carriers Act.

§ 8 & 9 VICT. c. 20 injury to them whilst in his care: (*Hearn v. London and South-Western Railway Co.*, 10 Exch. 793.)

Silk dresses.

It was held by Lord Abinger, in the case of *Davey v. Mason*, (1 Car. & M. 45,) that silk dresses made up for wear did not come within the first section of the Carriers Act; but this ruling was questioned in the case of *Bernstein v. Baxendale*, (6 C. B. N. S. 251,) and was distinctly overruled by the Court of Exchequer (following a previous decision of the Court of Queen's Bench) in the case of *Flowers v. South-Eastern Railway Co.*, (16 L. T. N. S. 329,) where it was held that the railway company could not be made liable for the loss of a silk dress which formed part of the wearing apparel of a passenger.

See further on the provisions of the Carriers Act, *post*, p. 419, *et seq.*

Liability as carriers of goods.

Definition of common carriers' duty at common law as to receipt of goods for conveyance.

Railway and Canal Traffic Act, 1854.

Duty of railway companies to make arrangements for receiving and forwarding traffic without unreasonable delay and without partiality.

LIABILITY AS CARRIERS OF GOODS.

At common law, "persons holding themselves out to the world as common carriers are bound to act as such in respect of such goods as they profess to carry, and have accommodation to carry, on such goods being tendered to them to be carried, and on a reasonable tender of proper remuneration, without subjecting the person tendering them to any unreasonable condition." *Per Cockburn, C. J., Garton v. Bristol and Exeter Railway Co.*, 1 B. & S. 162.) It was seen, *ante*, p. 393, that s. 86 of the principal act empowered railway companies to become common carriers, and now the Railway and Canal Traffic Act (17 & 18 Vict. c. 31) casts upon them the duty of receiving and forwarding traffic without unreasonable delay and without partiality. The 2d section enacts that—

II. "Each railway company, canal company, and railway and canal company, shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding, and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles, and no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and every railway company and canal company and railway and canal company having or working railways or canals which form part of a continuous line of railway or canal or railway and canal communication, or which have the terminus, station, or wharf of the one near the terminus, station, or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways or canals by the other, without any unreasonable delay, and without any such preference or advantage, or prejudice or disadvantage, as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodation may, by means of the railways and canals

of the several companies, be at all times afforded to the public in s & 9 Vic. c. 20. that behalf."

The 1st section defines the word "traffic" to include "not only passengers and their luggage, and goods, animals, and other things conveyed by any railway company or canal company, but also carriages, waggons, trucks, boats, and vehicles of every description adapted for running and passing on the railway or canal of any such company." The act provides for enforcing this duty against any company making default by means of the Court of Common Pleas in England, any Superior Court in Ireland, and the Court of Session in Scotland, or before any judge of any such court at the instance of the party aggrieved. See ss. 3-6 in the Appendix. The Court of Common Pleas issued rules in pursuance of the 4th section of this act; these will be found in 15 C. B. 472.

This statute does not take away from railway companies the right which the Court (in *Johnson v. Midland Railway Co.*, 4 Exch. 369) declared them to have in common with other carriers, of carrying only particular kinds of goods to and from particular stations. Thus in *Oxlade v. North-Eastern Railway Co.*, 1 C. B. N. S. 455, upon a motion for an injunction under this act against the North-Eastern Railway Company enjoining them *inter alia* to carry upon their railway such coke and coal as might be offered to them by the complainant for that purpose, the rule as to this part was discharged, it being held that the company were not common carriers of coal, although they carried coal for colliery proprietors straight from the pit's mouth to a depôt on the line built expressly for the purpose, where the coals were sold under the management of a depôt agent appointed by the North-Eastern Railway Company. In 1864, Oxlade again applied for an injunction to compel the same company to forward the coals and trucks of the complainant on their line, but the Court maintained their former decision in 1857, holding that neither at common law nor under the Railway Traffic Act, 1854, is a railway obliged to carry goods otherwise than according to their public profession, and that it was competent for the company to carry only for colliery owners: (15 C. B. N. S. 680.) This case apparently extends the rights of common carriers to select their traffic much further than the earlier cases have laid it down. Parke, B., in *Johnson v. Midland Railway Co.*, 4 Exch. 373, says, that a carrier may profess to carry a particular kind of goods only, or he may limit his obligation to carrying from one place to another, and then he would not be bound to carry to or from the intermediate places; but that until he retracts, every individual may call upon him to receive and carry goods according to his public profession; but from this case it would appear that a carrier may say I will carry for such a class of persons only, as well as only such a description of goods. It must, however, be borne in mind that the affidavits for the North-Eastern Railway Company made out a very strong case of public convenience for the course they adopted, and probably the Court, considering each case on its merits, would not allow a company to choose its customers by classes, unless it appeared for the benefit of the public that they should do so.

The inequality of charge complained of must be an inequality on the same line, and not a difference of rate between the main line

Meaning of the word "traffic" in Railway and Canal Traffic Act, 1854.

Parties complaining may apply by motion or summons to the Superior Courts.

Railway companies may limit their carriage to particular kinds of goods, and to and from particular stations.

Company may carry coal for colliery proprietors only, and refuse to carry for coal merchants.

Railway companies bound to carry according to their public profession.

The inequality must be on the same line.

11 & 12 VICT. c. 20. and the branch: (*In re Caterham Railway Co.*, 1 C. B. N. S. 410.)

Cases in which the Court of Common Pleas has granted injunctions on account of inequality of treatment.

In *Ransome v. The Eastern Counties Railway Co.*, 1 C. B. N. S. 437, the complainants' coal merchants at Ipswich sent coals to various places on the line, and the company charged them much higher rates than they charged the plaintiff, the object being to enable plaintiff, whose coal came to Peterborough by railway, to compete with the complainants, who had the advantage of having their coal brought to Ipswich by sea. Held that this was giving an undue preference to plaintiff.

In *Harris v. Cockermouth and Workington Railway Co.*, 3 C. B. N. S. 693, the company agreed with the lessees of certain collieries to carry their coals at a lower rate than they carried for others in consequence of the owners of the collieries having connected them with the railway by a tramway; with the railway, the company also made a further reduction under the influence of a threat that the owner would construct another railway. Held that neither ground justified the preference: (*Baxendale v. Great Western Railway Co.*, 5 C. B. N. S. 333.) It is not a legitimate reason for giving a preference to a customer that he promises to employ for traffic other lines of the company distinct from the one on which the preference is given: (*Ib.*)

Railway company not allowed to include a charge for collecting and delivering in the rate of carriage.

A railway company is not allowed to give itself an undue preference in their capacity of carriers. Thus in *Baxendale v. Great Western Railway Co.*—The Reading Case—5 C. B. N. S. 336, the company formerly charged a uniform rate of 3s. 6d. per ton on a certain class of goods conveyed upon their railway between their stations at Reading and Paddington. These goods were principally collected and delivered by Messrs Baxendale, the complainants, at a charge of 4s. 10d. per ton. The company raised their charge for carrying these goods under 500 lbs. to 8s. 4d. per ton, being the aggregate of the charge for carrying and that for collecting and delivering, and gave notice that they would collect and deliver goods free of charge. The purpose of this was to compel the public to employ the railway company to collect and deliver. The Court granted an injunction holding that the company's conduct was an undue preference to themselves as carriers, and an unreasonable disadvantage imposed upon the complainants.

This case was confirmed in *Garton v. Great Western Railway Co.*, 5 C. B. N. S. 669. But where the carriage is not auxiliary to their business as railway carriers, see *Baxendale v. London and South-Western Railway Co.*, 1 L. R. (Ex.) 187.

An undue preference to require conditions to be signed by some customers and not by others.

It is an undue preference for a railway company to receive goods from a carrier without requiring him to sign conditions which all other carriers who bring goods to the company are required to sign: (*Baxendale v. Bristol and Exeter Railway Co.*, 11 C. B. N. S. 787; see also *Garton v. Bristol and Exeter Railway Co.*, 6 C. B. N. S. 639.)

Undue preference to close the station to the public earlier than to the company's own carts; but see 1 L. R. C. P. 588, *infra*.

Another way in which railway companies have preferred one customer to another is by receiving his goods at an hour when their doors were closed to the general public. Messrs Baxendale & Co. obtained an injunction against the London and South-Western Railway to restrain them from requiring other carriers to bring goods earlier

to the station than they received them from their own receiving-houses. The company acted as carters, and received goods from their own carts as late as 9 P.M., whereas they required complainants to deliver theirs before 6.30 P.M. Held, following *Garton v. Bristol and Exeter Railway Co.*, 6 C. B. N. S. 639, that the complainants were entitled to an injunction: (*Baxendale v. London and South-Western Railway Co.*, 12 C. B. N. S. 758.)

This case may, however, be now considered to be overruled by *In re Palmer v. London and South-Western Railway Co.*, L. R. 1 C. P. 588. Palmer complained that the London and South-Western Railway Co. refused to admit his vans into their station after 6.30 P.M., but admitted their own vans and those of Baxendale & Co. at a later hour. It was shown that the company acted *bonâ fide*, and that the goods they received from their own carts after 6.30 P.M. were sorted, weighed, and invoiced by their servants at the various collecting-houses, so that they were ready for immediate forwarding when they arrived at the station. The company received goods from Baxendale & Co. after 6.30 P.M. in consequence of the injunction mentioned above. Held, *per* Erle, C. J., and Smith, J., that the decisions of the Court under the Railway and Canal Act being subject to no review, and depending upon special facts in each case, are not binding in the same way that precedents of law are, and that the injunction in *Baxendale v. London and South-Western Railway Co.* ought not to have been granted. Held, *per* Willes and Keating, J.J., that the above cases were binding precedents, and were rightly decided. The Court being equally divided, the rule dropped.

Whether Court is bound by previous decisions under the Railway and Canal Traffic Act.

A long series of decisions, commencing with the case of *Pickford v. The Grand Junction Railway Co.*, (10 M. & W. 399,) decided in the year 1842, and continuing down to the case of *Baxendale v. London and South-Western Railway Co.*, (L. R. 1 Ex. 137,) in 1866, have fully established that a railway company is not justified in charging carriers higher rates for packed parcels than it would charge an ordinary customer for a package of the same weight. In *Pickford v. Grand Junction Railway Co.*, (10 M. & W. 399,) the company's list of rates was divided into seven classes, the lowest being 16s. a ton, and the highest 60s.; but for boxes, bales, and hampers, and other packages, when they contained parcels under 112 lbs. weight each, directed, intended, or consigned for different persons, they charged 1d. per lb. weight. Held that this last was not a reasonable charge in the case of a package above 100 lbs. weight made up by a carrier, and directed to one person. Parke, B., said perhaps some small additional sum might be added to meet the liability of loss, and to defend separate actions of trover by the different owners of the inclosed parcels. But in the next case on this question, viz., *Crouch v. Great Northern Railway Co.*, (11 Ex. 742,) Martin, B., in a learned and elaborate judgment, lays it down that an action of trover would not lie, or if it would, at the suit of no one but the sender of the package.

Cockburn, C. J., in *Garton v. Great Western Railway Co.*, (6 C. B. N. S. 639,) said, "I must confess I have always felt that the packed parcel system operates hardly upon the railway;" and Erle, C. J., in dissenting from the other members of the Exchequer Chamber in the case of *Sutton v. Great-Western Railway*, (3 H. & C. 800,)

8 & 9 Vict. c. 20. contended strongly that the railway company were justified in charging packed parcels extra. In that case, however, Cockburn, C. J., Byles, Blackburn, Keating, Mellor, and Shee, J.J., supported the ruling of Martin, B., to which exception had been taken, so that the verdict in favour of the plaintiff for the amount he had paid in excess of the ordinary rate stood. Sutton subsequently applied to the Court of Exchequer for an injunction under the C. L. P. Act, 1854, ss. 79 and 82, to restrain the company from charging the petitioner for the carriage of his goods, otherwise than equally with all other persons and after the same rate, in respect of goods of the like description under the like circumstances. The injunction was refused, the Court holding that the act was not intended to apply to such a case: (4 H. & C. 325.) It is not easy to see why the injunction was sought from the Exchequer under the C. L. P. Act, instead of applying to the Court of Common Pleas under the Railway and Canal Traffic Act.

The last case upon the packed parcels dispute is that of *Baxendale v. London and South-Western Railway*, (4 H. & C. 133; L. R. 1 Ex. 137.) The defendants were in the habit of charging to the public on any consignment of goods made to one person, though consisting of several distinct parcels, a tonnage rate on the aggregate weight. The plaintiff sent by Deptford Railway a package of goods consisting of a number of small parcels, the whole package being consigned to the plaintiffs at the station, to which they were to be carried. Many of the parcels, in addition to the address of the plaintiffs, had the names and addresses of the persons to whom the plaintiff intended to deliver them. Held, that the fact that the goods had such names and addresses did not entitle the defendants to charge separately for them, and that the plaintiffs were entitled to recover such extra charges which they had paid under protest.

Regulations of
Railways Act,
1868.

The Regulations of Railways Act, 1868, (31 & 32 Vict. c. 119,) provides, in the 16th section, for equality of treatment where railway works steam-vessels. The 17th section compels the company, on application within one week of the payment of any charge in respect of the conveyance of any goods, to furnish particulars of such charge. Section 18 enacts that where two railways are worked by one company, the calculations of tolls and charges for any distances in respect of traffic (whether passengers, animals, goods, carriages, or vehicles) conveyed on both railways, the distances traversed shall be reckoned continuously on such railways as if they were one railway.

Having considered the nature and extent of railway companies' duty to receive and carry goods, we now have to inquire as to their responsibility for the safe custody and delivery of the articles committed to them as carriers.

At common law
the carrier in-
sures the goods
and contracts to
deliver within a
reasonable time.

The common law implies a contract of insurance by the common carrier against all risks and injuries to the goods received by him in the way of his trade, save those caused by the act of God or the king's enemies: (2 Stephen's Blackstone, p. 87.) There is also an implied contract that the goods shall be delivered at their destination within a reasonable time, according to the usual course of business: (*Great Northern Railway Co. v. Taylor*, 35 L. J., C. P. 210; *Raphael v. Pickford*, 5 M. & G. 554.) The carrier could diminish this common law

Might limit his
liability by spe-
cial contract.

liability by making special contracts; and, until the Legislature modified the law, this was commonly done by posting up and distributing notices that they would not be responsible for more than a certain value, unless the owners insured by paying an additional rate.

If this notice could be brought to the knowledge of the sender of the goods, it was incorporated into the contract, and he became bound by it: (*Mayhew v. Eames*, 3 B. & C. 601; see 603.) *Secus*, if not brought to his notice: (*Kerr v. Willan*, 6 M. & S. 150.)

It is not necessary to trace more minutely the duty of carriers at common law, as the statute-book has so completely varied it, and therefore we will pass on to explain the law as it now stands thus altered.

The Land Carriers Act (1 W. IV. c. 68) enacts that "no common carrier by land for hire shall be liable for the loss of, or injury to any gold or silver coin of this or any foreign realm, gold or silver in a manufactured or unmanufactured state, precious stones, jewellery, watches, clocks, time-pieces of any description, trinkets, bills, notes of any bank in Great Britain or Ireland, orders, notes, or securities for the payment of money, English or foreign stamps, maps, writings, title-deeds, paintings, engravings, pictures, gold or silver plate or plated article, glass, china, silks, manufactured or unmanufactured, wrought up or not wrought up with other materials, furs or lace, or any of them, contained in package, which shall have been delivered either to be carried for hire or to accompany the person of any passenger, when the value of such articles contained in such parcel shall exceed £10, unless at the time of the delivery the value of such article shall have been declared at the time of the delivery at the office, warehouse, or receiving-house of the carrier or to his servant, for the purpose of being carried, the value or nature of such articles shall have been declared by the person sending or delivering the same, and increased charge or an engagement to pay the same be accepted by the person receiving the parcel."

By the 2d section, when any parcel containing any of the above articles shall be delivered, an increased rate of charge may be demanded. The rate of such charge is to be notified by some notice affixed in legible characters in some conspicuous part of the receiving-house of the carrier, and such notice is to bind all persons, without further proof, that it has come to their knowledge.

By the 5th section, every house which shall be appointed by the carrier for the reception of goods shall be deemed a receiving-house.

By the 3d section, carriers are to give receipts acknowledging the increased rate, such receipt not to be liable to the stamp-duty. If such receipt is not given when required, or the notice shall not be affixed, the carrier is to lose the benefit of the act.

The 4th section enacts that no public notice shall limit the carrier's liability in respect of any goods not within the act.

The 7th section provides that in case of loss of goods insured by the payment of the extra charge, the sender shall recover the extra charge, as well as the value of the goods.

Nothing in the act is to limit the liability of the carrier to answer for loss or injury occasioned by the felonious acts of his servants.

The value of the goods is to be proved at the trial, irrespective of value declared.

The 10th section provides that in all actions against carriers for

Notice incorporated into contract if brought to knowledge of customer.

By 1 W. IV. c. 68, carriers not liable for loss of, or injury to certain articles above value of £10, unless delivered as such, and increased charge paid. S. 1.

Notice of the rate of charge to be affixed in office or receiving-house. S. 2.

Receiving-house S. 5.

Carriers are to give receipt for extra charge. S. 3.

Notice not to limit liability in respect of other goods.

Sender may recover back extra charge in event of loss.

Carriers may pay money into Court.

- 8 & 9 VICT. c. 20. loss of, or injury to goods, whether the value has been declared or not, they may pay money into Court in the same way that money may be paid into Court in any other action.
- "Loss" does not include loss by delay: The words "loss of, or injury to goods" do not include loss or damage occasioned by delay in forwarding the goods, or by omission to forward them: (*Hearn v. London and South Western Railway Co.*, 10 Ex. 793. As to what are trinkets see *Bernstein v. Baxendale*, 6 C. B. N. S. 251, and 28 L. J. (C. P.) 267.)
- Trinkets.
- Cases defining the various articles named in the act. An accepted bill, containing neither a drawer nor payee, is not within the act, either as a bill, order, note, or security for the payment of money or writing of value: (*Stoessiger v. South-Eastern Railway Co.*, 3 E. & B. 549; see also *McCall v. Taylor*, 19 C. B. N. S. 301.) Smelling-bottles and the like are "glass." Silk watch-guards are silk in a manufactured state: (*Bernstein v. Baxendale*, 6 C. B. N. S. 251.) Elastic silk webbing, which is a woven fabric, each yard of which contains an ounce and a quarter of India rubber and three quarters of an ounce of cotton, the silk being of greater value than the other two materials, is within the meaning of the act—"silks worked up with other materials." Hat bodies which are made partly of fur and partly of wool are not "furs" within the act: (*Mayhew v. Nelson*, 6 C. & P. 58.) The term "lace" in this act is, by 26 & 29 Vict. c. 94, not to include machine-made lace.
- Declaration of value must be made in all cases, but carrier cannot demand extra charge without notice. The declaration of the value and nature of the property must be made whether the property be delivered at the carrier's office or elsewhere, and whether or not a notice is stuck up in the carrier's office or not. The notice required by the act is not a notice that the carrier means to avail himself of the act, but only a notice of the extra charge which he cannot demand without the notice, and if he refuses to give a receipt, he will lose the benefit of the statute: (*Hart v. Baxendale*, 6 Ex. 769; *Pianciani v. London and South-Western Railway Co.*, 18 C. B. 226.)
- Special contracts inferred from goods being sent after notice of conditions. Although the fourth section of this act does not allow carriers to limit their liability by public notices, yet it has been held that a special contract may be inferred from the fact that the plaintiff had special notice that the goods would not be taken except on certain terms, and from his afterwards persisting in sending them: (*Walker v. The York and North Midland Railway Co.* 2 E. & B. 750; *Van Toll v. South-Eastern Railway Co.*, 12 C. B. N. S. 75.) The person delivering the goods and declaring their value is not bound to tender the extra rate; but the carrier must demand the increased charge mentioned in the notice affixed in his office or receiving-house, whether the goods are delivered at such office or to the carrier's servant sent to fetch them; and if no such demand is made, the carrier is liable for loss of, or injury to the goods, although the increased charge has not been paid: (*Behrens v. Great Northern Railway Co.*, 6 H. & N. 366, and in *Cam. Scacc.* 7 H. & N. 950.)
- Sender not bound to tender extra charge without demand. A railway company is responsible for the felonious acts of any servant of a sub-contractor whom it employs: (*Macku v. South-Western Railway Co.*, 2 Ex. 415.)
- Felonious acts of sub-contractor's servants. Carriers are not liable for the loss of goods mentioned in section 1 of 1 Will. IV. c. 68, although caused by the gross negligence of their servants, unless the sender has complied with the provisions of that act: (*Hinton v. Dibbin*, 2 Q. B. 647.)

Carriers of Goods—Railway and Canal Traffic Act. 421

Railway companies having a practical monopoly of the carrying trade were able to insist upon special contracts, not merely limiting their liability, but in some cases removing it altogether, and rendering them irresponsible for the gross negligence of their servants. This conduct created great dissatisfaction and much litigation, which culminated in the cases of *Carr v. Lancashire and Yorkshire Railway*, (7 Ex. 707,) and *Walker v. The Yorkshire and North Midland Railway*, (2 E. & B. 750; *Pardington v. South Wales Railway Co.*, 1 H. & N. 392.) Blackburn, J., in delivering his opinion to the House of Lords in the case of *Peck v. North Staffordshire Railway*, (10 H. of L. C.; see p. 504,) points out the great injustice done by these contracts, whereby the companies were enabled to protect themselves from liability to their customers for acts which would have afforded a right of action even to a wrong-doer. To meet this anomalous state of the law, the Legislature, in 1854, passed the Railway and Canal Traffic Act, (17 & 18 Vict. c. 31,) the 7th section of which enacts that—

"Every such company as aforesaid shall be liable for the loss of or for any injury done to any horses, cattle, or other animals, or to any articles, goods, or things, in the receiving, forwarding, or delivering thereof, occasioned by the neglect or default of such company or its servants, notwithstanding any notice, condition, or declaration made and given by such company contrary thereto or in anywise limiting such liability; every such notice, condition, or declaration being hereby declared to be null and void: Provided always, that nothing herein contained shall be construed to prevent the said companies from making such conditions with respect to the receiving, forwarding, and delivering of any of the said animals, articles, goods, or things as shall be adjudged by the Court or Judge before whom any question relating thereto shall be tried to be just and reasonable: Provided always, that no greater damages shall be recovered for the loss of or for any injury done to any of such animals, beyond the sums hereinafter mentioned; (that is to say,) for any horse, fifty pounds; for any neat cattle, per head, fifteen pounds; for any sheep or pigs, per head, two pounds; unless the person sending or delivering the same to such company shall, at the time of such delivery, have declared them to be respectively of higher value than as above mentioned; in which case it shall be lawful for such company to demand and receive by way of compensation for the increased risk and care thereby occasioned a reasonable percentage upon the excess of the value so declared above the respective sums so limited as aforesaid, and which shall be paid in addition to the ordinary rate of charge; and such percentage, or increased rate of charge, shall be notified in the manner prescribed in the statute eleventh George Fourth and first William Fourth, chapter sixty-eight, and shall be binding upon such company in the manner therein mentioned: Provided also, that the proof of the value of such animals, articles, goods, and things, and the amount of the injury done thereto, shall in all cases lie upon the person claiming compensation for such loss or injury: Provided also, that no special contract between such company and any other parties, respecting the receiving, forwarding, or delivering of any animals, articles, goods, or things as aforesaid shall be binding upon or affect any such party, unless the same be signed by him or by the person delivering such animals, articles,

17 & 18 Vict. c. 31, s. 7.

Company to be liable for neglect or default in the carriage of goods, notwithstanding notice to the contrary.

Company not to be liable beyond a limited amount in certain cases, unless the value declared and extra payment made.

Proof of value to be on the person claiming compensation. No special contract to be binding unless signed.

5 & 9 VICT. c. 20.
 Saving of Car-
 riers Act, 11 Geo.
 IV. & 1 Will. IV.
 c. 68.

Injury from want
 of food or water.
 Dogs.

goods, or things respectively for carriage: Provided also, that nothing herein contained shall alter or affect the rights, privileges, or liabilities of any such company under the said act of the eleventh George Fourth and first William Fourth, chapter sixty-eight, with respect to articles of the descriptions mentioned in the said act."

Under this section, although the injuries complained of be caused by the negligence of the company's servants, during the delivery of the animal, and before the terms of the contract have been agreed upon, the company are only liable to the extent of £50, unless the value has been declared: (*Hodgman v. West Midland Railway Co.*, 5 B. & S. 173; 33 L. J. (Q. B.) 233; and in *Cam. Seacc.*, 35 L. J. (Q. B.) 85.)

Injury to cattle from want of food or water is an injury within the act: (*Allday v. Great Western Railway Co.*, 34 L. J. (Q. B.) 5.)

Dogs are included in the words, "other animals:" (*Harrison v. London, Brighton, and South-Coast Railway Co.*)

Great difficulty and uncertainty for a long time existed as to the correct interpretation of the section. In the case of *Pardington v. South Wales Railway Co.*, 1 H. & N. 392, it was held by Martin and Bramwell B.B., that the section did not invalidate special contracts, signed by the parties, although they might not appear reasonable to the judge. However, the Court of Exchequer Chamber, in the case of *M'Manus v. Lancashire and Yorkshire Railway Co.*, 4 H. & N. 327, on appeal from the Court of Exchequer, 2 H. & N. 693 held, *dissentiente* Erle J., that the clause making void all notices, conditions, and declarations made and given by the company, limiting their liability unless such as the court or judge, trying any cause, may adjudge to be just and reasonable, extends to cases where a special contract has been signed in conformity with the subsequent proviso in the section. Erle, J., gave a separate judgment, urging the injustice which the above construction would inflict upon the companies. The condition in that case was, that the company "would not be responsible for any injury or damage howsoever caused;" this was held by the Exchequer Chamber, Erle, J. *dissentiente*, to be unjust and therefore void; as it would protect the company from all responsibility for loss, though occasioned by their own negligence or misconduct. *Per* Erle, J., the condition does not extend to wilful neglect or misfeasance, and is reasonable.

In *Harrison v. London, Brighton, and South-Coast Railway Co.*, 2 B. & S. 123, Erle, C. J., and Keating, J., held that the section only applied to cases where the loss occurred through the neglect or default of the company, but that it did not prohibit them from making conditions against liability for accident. The judgment of the Court of Exchequer Chamber was, however, given for the defendant on the ground that the conditions of the contract were reasonable. These conditions on the face of them exempted the company from any injury however caused; but it was held by the majority of the Court, (whose judgment was delivered by Erle, C. J.,) that they were never intended to exempt from wilful injury, and could not so exempt. In *Beal v. South Devon Railway Co.*, 5 H. & N. 875, the company had given public notice that they would only convey fish by special agreement, and by particular trains, and that the sender should sign the following conditions:—"That the company should not be responsible, under any circumstances, for loss of market, or

for other loss or injury arising from delay or detention of trains, 8 & 9 VICT. c. 20. exposure to weather, stowage, or from any cause whatever, other than gross neglect or fraud." These conditions were signed by the plaintiff, and were held by the Court, and on appeal by the Exchequer Chamber, (3 H. & C. 337,) just, and were binding upon the party who had signed them. Crompton, J., in delivering the judgment of the Exchequer Chamber said, that in the case of a carrier, gross negligence includes the want of that reasonable care, skill, and expedition which may properly be expected from persons so holding themselves out, and their servants.

The House of Lords, in the case of *Peek v. North Staffordshire Railway Co.*, (10 H. L. C. 474-588,) have finally settled the meaning of this 7th section of the Railway and Canal Act of 1854. It was held, "That all the parts of the section must be read together, and therefore the conditions there spoken of as capable of being imposed by railway companies in limitation of their liability as common carriers, must not only be in the opinion of a court or judge just and reasonable, but must also be embodied in a special contract in writing, signed by the owner or sender of the goods." The condition sought to be enforced by the company was, that the company would not be responsible for damage to goods sent by the railway, unless their value was declared and insurance premium of ten per cent. on the declared value paid. This condition was declared void by the Lords; *dissentiente* Lord Chelmsford, on the grounds, first, that it was not reasonable, and, secondly, that a note from the sender telling the company to forward the marbles uninsured could not be incorporated with the other documents so as to constitute a contract, and that the words "not insured" could not be explained by parole evidence. The whole law and policy of the enactment will be found amply discussed in the judgment of their lordships, and by the judges who were called in to assist them.

Two more cases may be mentioned having reference to the reasonableness of the conditions made by railway companies. In *Allday v. Great Western Railway Co.*, 5 B. & S. 903, the condition was, that "the company are not to be amenable for any consequences arising from detention or delay in or in relation to the conveying or delivery of the said animals, however caused," and the Court held it to be unreasonable. In *Rooth v. North-Eastern Railway Co.*, L. R. 2]Exch. 173, the company had stipulated for the following conditions, which were signed by the plaintiff:—"The owner undertakes all risk of loading, unloading, and carriage, whether arising from the negligence or default of the company or their servants, or from defect or imperfection in the station, platform, or other places of loading or unloading, or of the carriage in which the cattle may be loaded or conveyed, or from any other cause whatever." "The company will grant free passes to persons having the care of live stock, as an inducement to owners to send proper persons with and to take care of them." The Court held that the first condition was unreasonable, although the company had granted a free pass to a servant of the owner's to take charge of the cattle.

Where there is an alternative method of carriage, a condition that horses carried at the lower rate are to be at owner's risk is reasonable, and not contrary to the decision of the House of Lords, in

*Peek v. North
Staffordshire
Railway Co.*

*Allday v. Gt.-W.
R. Co.*

*Rooth v. N.-E. R.
Co.*

Alternative method of carriage.

- 8 & 9 VICT. c. 20. *Peck v. North Staffordshire Railway Co.*; but the condition does not exonerate the company from the duty of delivering within reasonable time: (*Robinson v. Great Western Railway Co.*, 35 L. J. C. P. 123.)
- Declaration of value. The declaration of value required by the 7th section of the Railway and Canal Act, 1854, must be such as to convey a distinct intimation to the company that the sender intends to hold them responsible for the higher sum. A company was therefore held liable for refusing to carry a mare without payment of the higher charge, because their servant casually learned that the mare was worth £135: (*Robinson v. London and South-Western Railway Co.*, 19 C. B. N. S. 51.)
- A condition that the company should not be held liable for damage beyond their own line, was held reasonable in *Aldridge v. Great Western Railway Co.*, 15 C. B. N. S. 582.
- False declaration of value. Estoppel. A declaration signed by the sender of horses that their value did not exceed £10 each, was held not to be part of the contract with the company, but a statement which estopped him claiming more at the trial: *McCance v. London and North-Western Railway Co.*, 7 H. & N. 481; 3 H. & C. 343.)
- Contract to carry beyond company's own line. If a railway company contract to carry beyond their own line, they are liable for any loss or damage occurring on another line, (*Muschamp v. Lancashire and Preston Railway Co.*, 8 M. & W. 421; *Webber v. Great Western Railway Co.*, 4 H. & C. 582;) and they alone are liable to the sender: (*Bristol and Exeter Railway Co. v. Collins*, 7 H. L. Cas. 194.)
- Carrier must keep goods a reasonable time. If the goods are refused by the consignee, it is the duty of the carrier to keep them a reasonable time to await instructions from the consignor: (*Crouch v. Great Western Railway*, 2 H. & N. 491, and in *Cam. Scacc.* 3 H. & N. 183;) but there is no rule of law that he must give notice to the consignor: (*Hudson v. Baxendale*, 2 H. & N. 575.)
- Proper person to sue. The proper person to sue for breach of contract to carry and deliver safely is the person at whose risk the goods are during the transit: (1 *Lush's practice*, p. 93, 3d edition.)
- Place of delivery. Although a carrier has contracted with the consignor to deliver at a particular place, he may deliver at any place at which the consignee orders him. (So *London and North-Western Railway*, app., and *Bartlett*, resp., 7 H. & N. 400.)
- Measure of damages. The measure of damages in an action for non-delivery of goods is the price at which the goods can be obtained at the market, if there be one, at the place and time at which they ought to have been delivered; but if there be no market, the damage must be ascertained by adding to the cost price the expense of transit and the reasonable profit of the importer: (*O'Hanlan v. Great Western Railway*, 6 B. & S. 484.)
- Where a parcel of samples was delivered to the Great Western Railway Company at Oxford, without notice of contents, to be carried to Liverpool, and by the negligence of the company the parcel was delayed, and the plaintiff spent three days at an hotel waiting for it, it was held that the hotel expenses were too remote, but that the plaintiff might perhaps have recovered cab-hire if he had had frequently to call at the station to inquire about the parcel: (*Woodger v. Great Western Railway*, L. R. 2 C. P. 320; see also *Great Western Railway*, app., and *Redmayne*, resp., L. R. 1 C. P. 329; and as to damages generally, *Hadley v. Baxendale*, 9 Ex. 341; *Wilson v.*

Lancashire and Yorkshire Railway Co., 9 C. B. N. S. 632; 30 L. J., 8 & 9 VICT. c. 20, C. P. 232; *Gee v. Lancashire and Yorkshire Railway Co.*, 6 H. & N. 211; 30 L. J., Ex., 11.)

As to sending dangerous goods by the railway, see *post*, s. 105, Sending dangerous goods.

XC. And whereas it is expedient that the company should be enabled to vary the tolls upon the railway so as to accommodate them to the circumstances of the traffic, but that such power of varying should not be used for the purpose of prejudicing or favouring particular parties, or for the purpose of collusively and unfairly creating a monopoly, either in the hands of the company or of particular parties: It shall be lawful, therefore, for the company, subject to the provisions and limitations herein and in the special act contained, from time to time to alter or vary the tolls by the special act authorised to be taken, either upon the whole or upon any particular portions of the railway, as they shall think fit; provided that all such tolls be at all times charged equally to all persons and after the same rate, whether per ton per mile or otherwise, in respect of all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, passing only over the same portion of the line of railway under the same circumstances; and no reduction or advance in any such tolls shall be made either directly or indirectly in favour of or against any particular company or person travelling upon or using the railway.

Power to vary tolls.

Tolls to be charged equally under like circumstances.

A summary of the law with respect to the liability of railway companies as carriers of goods, luggage, and passengers, will be found under s. 89, *ante*.

Where a railway company charged more to persons travelling a short distance than to other persons travelling the same distance, but proceeding on their journey, it was held that the clause for equality of charge was only meant to prevent a monopoly to the prejudice of one passenger or carrier in favour of another, and that, as it was not shown that the public were really injured by the inequality of charge, and that the higher charge did not exceed the authorised rate, the Court of Chancery would not grant an injunction: (*Attorney-General v. Birmingham, &c., Railway Co.*, 2 R. C. 124.)

XCI. And whereas authority has been given by various acts of Parliament to railway companies to demand tolls for the conveyance of passengers and goods and for other services over the fraction of a mile equal to the toll which they are authorised to demand for one mile; therefore, in

How tolls to be calculated where railways amalgamated.

8 & 9 Vict. c. 20. cases in which any railway shall be amalgamated (*a*) with any other adjoining railway or railways, such tolls shall be calculated and imposed at such rates as if such amalgamated railways had originally formed one line of railway.

Tolls, &c., due to or from dissolved company to be paid to or by the amalgamated company.

(*a*) By s. 40 of the Railways Clauses Act, 1863, (26 & 27 Vict. c. 92, *post*.) it is enacted that, except as may be otherwise provided in the special act, all debts and money due from or to the dissolved company, or any persons on their behalf, shall be payable and paid by or to the amalgamated company, and all tolls, rates, duties, and money due or payable by virtue of any act relating to the dissolved company from or to that company, shall be due and payable from or to the amalgamated company, and shall be recoverable from or by the amalgamated company by the same ways and means, and subject to the same conditions, as would or might have been recoverable from or by the dissolved company if the amalgamating act had not been passed.

Railway to be free on payment of tolls.

XCII. It shall not be lawful for the company at any time to demand or take a greater amount of toll, or make any greater charge for the carriage of passengers or goods, than they are by this and the special act authorised to demand; and upon payment of the tolls from time to time demandable, all companies and persons shall be entitled to use the railway, with engines and carriages properly constructed (*a*) as by this and the special act directed, subject (*b*) nevertheless to the provisions and restrictions of the said act of the sixth year of her present Majesty, intituled, "An Act for the Better Regulation of Railways, and for the Conveyance of Troops" (*c*), and to the regulations to be from time to time made by the company by virtue of the powers in that behalf hereby and by the special act conferred upon them.

5 & 6 Vict. c. 55.

(*a*) This section is not to be construed so as to give validity to traffic agreements whereby a delegation of powers is effected; for such agreements are to be construed upon their provisions, and cannot have a wider effect by virtue of the provisions of the act: (*Great Northern Railway Co. v. Eastern Counties Railway Co.*, 9 Hare, 306; 21 L. J. (Ch.) 837.)

Right to use stations.

Although it has been held that the term "railway" includes stations, (see *Cotter v. Midland Railway Co.*, 2 Ph. 469; 5 R. C. 189,) still it is very doubtful whether it extends so far as that parties who have a right by the payment of mileage tolls to use the railway under this section may also have the free use of the stations: (*Midland Railway Co. v. Ambergate Railway Co.*, 10 Hare, 359.)

It seems more reasonable that persons having the right to run trains over the line should have to buy land near the station, and exercise their power under s. 76 of the Railways Clauses Act (*ante*) of making a communication with the line: (*Ibid.*)

(b) See ss. 115 and 117 of this act, *post*.

8 & 9 Vict. c. 20.

(c) See the provisions of this act in the Appendix.

XCIH. A list of all the tolls authorised by the special act to be taken, and which shall be exacted by the company, shall be published (a) by the same being painted upon one toll board or more in distinct black letters on a white ground, or white letters on a black ground, or by the same being printed in legible characters on paper affixed to such board, and by such board being exhibited in some conspicuous place on the stations or places where such tolls shall be made payable.

List of tolls to be exhibited on a board.

(a) See *Fripp v. Chard Railway Co.*, 22 L. J. (Ch.) 1084; 17 Jur. 887, in which it was doubted whether a resolution of the directors that the tolls on carriage should be reduced in case a certain quantity of goods should be carried, was binding until the effect of the resolution had been painted up as required by the act.

See s. 15 of 31 & 32 Vict. c. 119, *post*.

XCIV. The company shall cause the length of the railway to be measured, and milestones, posts, or other conspicuous objects to be set up and maintained along the whole line thereof, at the distance of one quarter of a mile from each other, with numbers or marks inscribed thereon denoting such distances.

Milestones.

XCV. No tolls shall be demanded or taken by the company for the use of the railway during any time at which the boards hereinbefore directed to be exhibited shall not be so exhibited, or at which the milestones hereinbefore directed to be set up and maintained shall not be so set up and maintained; and if any person wilfully pull down, deface, or destroy any such board or milestone, he shall forfeit a sum not exceeding five pounds for every such offence.

Tolls to be taken only whilst board exhibited and milestones set up.

XCVI. The tolls shall be paid to such persons, and at such places upon or near to the railway, and in such manner and under such regulations, as the company shall, by notice to be annexed to the list of tolls, appoint (a).

Tolls to be paid as directed by the company.

(a) See *Rowe v. Shilson*, 4 B. & Ad. 726.

XCVII. If, on demand, any person fail to pay the tolls due in respect of any carriage or goods, it shall be lawful for the company to detain (a) and sell such carriage, or all or any part of such goods, or, if the same shall have

In default of payment of tolls, goods, &c., may be detained and sold.

s & 9 VICT. c. 20.

been removed from the premises of the company, to detain and sell any other carriages or goods within such premises belonging to the party liable to pay such tolls, and out of the moneys arising from such sale to retain the tolls payable as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus, if any, of the moneys arising by such sale, and such of the carriages or goods as shall remain unsold, to the person entitled thereto, or it shall be lawful for the company to recover any such tolls by action at law.

Distrain for tolls.

(a) The sum actually due for tolls must be demanded before the company can distrain for them: (*Field v. Newport, &c., Railway Co.*, 3 H. & N. 409; 27 L. J. (Exch.) 396.)

Where a railway company entitled to distrain for tolls demanded a gross sum made up of two sums, one due for toll, the other not so due, and the party tendered the amount due for tolls as being all that was due, it was held that the company were not entitled to distrain, but were not precluded by the tender from recovering the toll: (*Ibid.*)

A railway company were held authorised, under a section similar to the present, to detain and sell for rates and charges which had become due in respect of goods previously delivered without payment of the rates and charges due upon them, other goods of the same owner which happened to be at the time of detention on their premises: (*Green v. St Katherine Dock Co.*, 19 L. J. (Q. B.) 53; 13 Jur. 1116.)

Account of lading, &c., to be given.

XCVIII. Every person being the owner or having the care of any carriage or goods passing or being upon the railway shall, on demand, give to the collector of tolls, at the places where he attends for the purpose of receiving goods or of collecting tolls for the part of the railway on which such carriage or goods may have travelled or be about to travel, an exact account in writing, signed by him, of the number or quantity of goods conveyed by any such carriage, and of the point on the railway from which such carriage or goods have set out or are about to set out, and at what point the same are intended to be unloaded or taken off the railway; and if the goods conveyed by any such carriage, or brought for conveyance as aforesaid, be liable to the payment of different tolls, then such owner or other person shall specify the respective numbers or quantities thereof liable to each or any of such tolls.

Penalty for not giving account of lading.

XCIX. If any such owner or other such person fail to give such account, or to produce his way-bill or bill of lading, to such collector or other officer or servant of the

company demanding the same, or if he give a false account, ^{8 & 9 Vict. c. 20.} or if he unload or take off any part of his lading or goods at any other place than shall be mentioned in such account, with intent to avoid the payment of any tolls payable in respect thereof, he shall for every such offence forfeit to the company a sum not exceeding ten pounds for every ton of goods, or for any parcel not exceeding one hundred-weight, and so in proportion for any less quantity of goods than one ton, or for any parcel exceeding one hundred-weight, (as the case may be,) which shall be upon any such carriage; and such penalty shall be in addition to the toll to which such goods may be liable.

C. If any dispute arise concerning the amount of the tolls due to the company, or concerning the charges occasioned by any detention or sale thereof under the provisions herein or in the special act contained, the same shall be settled by a justice; and it shall be lawful for the company in the meanwhile to detain the goods, or (if the case so require) the proceeds of the sale thereof. ^{Disputes as to amount of tolls chargeable.}

CI. If any difference arise between any toll collector or other officer or servant of the company and any owner of or person having the charge of any carriage passing or being upon the railway, or of any goods conveyed or to be conveyed by such carriage, respecting the weight, quantity, quality, or nature of such goods, such collector or other officer may lawfully detain such carriage or goods, and examine, weigh, gauge, or otherwise measure the same; and if upon such measuring or examination such goods appear to be of greater weight or quantity or of other nature than shall have been stated in the account given thereof, then the person who shall have given such account shall pay, and the owner of such carriage, or the respective owners of such goods, shall also, at the option of the company, be liable to pay, the costs of such measuring and examining; but if such goods appear to be of the same or less weight or quantity than and of the same nature as shall have been stated in such account, then the company shall pay such costs, and they shall also pay to such owner or person having charge of such carriage, and to the respective owners of such goods, such damage (if any) as shall appear to any justice, on a summary application to him for that purpose, to have arisen from such detention. ^{Differences as to weights, &c.}

8 & 9 VICT. c. 20.

Toll collector to be liable for wrongful detention of goods.

CII. If at any time it be made to appear to any justice, upon the complaint of the company, that any such detention, measuring, or examining of any carriage or goods, as hereinbefore mentioned, was without reasonable ground, or that it was vexatious on the part of such collector or other officer, then the collector or other officer shall himself pay the costs of such detention and measuring, and the damage occasioned thereby; and in default of immediate payment of any such costs or damage the same may be recovered by distress of the goods of such collector, and such justice shall issue his warrant accordingly.

Penalty on passengers practising frauds on the company.

CIII. If any person travel or attempt to travel in any carriage of the company, or of any other company or party using the railway, without having previously paid his fare (a), and with intent to avoid payment thereof (b), or if any person, having paid his fare for a certain distance, knowingly and wilfully proceed in any such carriage beyond such distance, without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof, or if any person knowingly and wilfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit such carriage, every such person shall for every such offence forfeit to the company a sum not exceeding forty shillings (c).

(a) Where the fare from A. to C. is less than from A. to B. a station intermediate between A. and C., a passenger who pays the fare from A. to C., in order to evade payment of the larger fare from A. to B., and then gets out at B., cannot be convicted under this section: (*R. v. Frere*, 4 El. & B. 598.)

Excursion tickets.

This was the case of an ordinary passenger ticket, the difference in fare being the result of competition. In the case of excursion trains, however, where the tickets usually have printed on them a notice that they are not available for any other station than the one named on them, or some reference to the bills relating to the trip, the contract would doubtless be held a special one, and the passenger be compelled to pay the fare to the station where he alights: (See *Stewart v. London and North-Western Railway Co.*, 33 L. J. (Exch.) 199.)

In the former case, Lord Campbell, C. J., in giving judgment, observed, "I cautiously abstain from expressing any opinion as to the power of the company to make special regulations or bye-laws so as to enforce larger fares for shorter distances."

(b) The fraudulent intention is the gist of the offence. Therefore, if a person with no intention to defraud the railway company travels further than the station to which his ticket entitles him to go, he

cannot be convicted under this section: (See *Dearden v. Townsend*, 8 & 9 VICT. C. 204 L. R. 1 Q. B. 10, notes to s. 109, *post*.)

A bye-law of a railway company provided that no passenger should enter a carriage without having first paid his fare and obtained a ticket: that each passenger on payment of his fare should be furnished with a ticket, which he should show when required, and deliver up on demand before leaving the company's premises. A passenger having three servants with him took tickets for himself and them by a certain train. He took his seat, with the tickets in his possession, in one part of the train and the servants entered another part, (the horse-boxes.) The train was divided into two parts by the company, that in which the master was seated being first despatched, he having before leaving showed the tickets for himself and the servants. Afterwards when the second part of the train was about to be despatched, a duly authorised servant of the company demanded the servants' tickets, which they were unable to show, and therefore were not allowed to travel by the train. It was held that this was a breach of contract by the company, for which they were responsible, notwithstanding the bye-law; that they could not justify their refusal to carry the servants, inasmuch as they had given the tickets to the master, and by the division of the train had separated him from his servants: (*Jennings v. Great Western Railway Co*, 35 L. J. (Q. B.) 15; 12 Jur. N. S. 331.)

Tickets taken by master for his servants.

This decision was based on the ground that the bye-law being made for the protection of the company; if they sought to enforce it, they must keep themselves in a condition to do so, which they had not done here, because they gave the tickets to the master for the servants, who were to go by the same train.

By 7 & 8 Vict. c. 85, s. 6, railway companies are bound to carry by certain trains children under three years of age without charge, and are entitled to half the fare charged for an adult in respect of all children between three and twelve years of age. The mother of a boy three years and two months old, carrying him in her arms, took a ticket for herself by one of these trains on the defendants' railway, but did not take a ticket for the boy. She was not asked at the time his age, and had no intention to defraud the company. The boy in the course of the journey having sustained an injury through the negligence of the defendants' servants, was held entitled to recover against the defendants for the injury he had sustained: (*Austin v. Great Western Railway Co*, L. R. 2 Q. B. 442.)

Children under three years.

(c) An indictment may be preferred against a person for obtaining a railway ticket by false pretences: (*R. v. Boulton*, 2 Car. & K. 919; 1 Den. C. C. 508; 13 Jur. 1034; *R. v. Beecham*, 5 Cox C. C. 181.)

CIV. If any person be discovered, either in or after committing or attempting to commit any such offence as in the preceding enactment mentioned, all officers and servants and other persons on behalf of the company, or such other company or party as aforesaid, and all constables, gaolers, and peace officers, may lawfully apprehend and detain such person until he can conveniently be taken be-

Detention of offenders (a).

s. & 9 VICT. c. 29. fore some justice, or until he be otherwise discharged by due course of law.

(a) As to the responsibility of railway companies for the wrongful acts of their servants, see notes to s. 154, *post*.

Penalty for bringing dangerous goods on the railway.

CV. No person shall be entitled to carry, or to require the company to carry, upon the railway, any aquafortis, oil of vitriol, gunpowder, lucifer matches, or any other goods which in the judgment of the company may be of a dangerous nature; and if any person send by the railway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant of the company with whom the same are left, at the time of so sending, he shall forfeit to the company twenty pounds for every such offence (a); and it shall be lawful for the company to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact.

Guilty knowledge necessary.

(a) A guilty knowledge on the part of the sender is necessary to support a conviction under such an enactment as this. Therefore where G. and S. received from N. cases which contained oil of vitriol, and N. had imposed upon them by stating that the contents were of an entirely different description, and G. and S. had no knowledge of what the contents really were, and sent them innocently by the railway, it was held that they were not liable to be convicted. But, *semble*, N. might have been proceeded against under the section: (*Hearne v. Garton*, 2 El. & El. 66.)

The senders might, it seems, without any guilty knowledge on their part, be made civilly liable to the railway company in such a case: (*Ibid.*)

See further the act of 1866 for the amendment of the law with respect to the carriage and deposit of dangerous goods, 29 & 30 Vict. c. 69.

Delivery of matters in possession or custody of toll collector at removal.

CVI. If any collector of tolls or other officer employed by the company be discharged or suspended from his office, or die, abscond, or absent himself, and if such collector or other officer, or the wife, widow, or any of the family or representatives of any such collector or other officer, refuse or neglect, after seven days' notice in writing for that purpose, to deliver up to the company, or to any person appointed by them for that purpose, any station, dwelling-house, office, or other building, with its appurtenances, or any books, papers, or other matters belonging to the company in the possession or custody of any such collector or

officer at the occurrence of any such event as aforesaid, then, upon application being made by the company to any justice, it shall be lawful for such justice to order any constable, with proper assistance, to enter upon such station or other building, and to remove any person found therein, and to take possession thereof, and of any such books, papers, or other matters, and to deliver the same to the company, or any person appointed by them for that purpose.

CVIL. And be it enacted, That the company shall every year cause an annual account in abstract to be prepared, showing the total receipts and expenditure of all funds levied by virtue of this or the special act for the year ending on the thirty-first day of December, or some other convenient day in each year, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified by the directors, or some of them, and by the auditors, and shall, if required, transmit a copy of the said account, free of charge, to the overseers of the poor of the several parishes through which the railway shall pass, and also to the clerks of the peace of the counties through which the railway shall pass, on or before the thirty-first day of January then next; which last-mentioned account shall be open to the inspection of the public at all seasonable hours, on payment of the sum of one shilling for every such inspection: Provided always, that if the said company shall omit to prepare or transmit such account as aforesaid, if required so to do by any such clerk of the peace or overseers of the poor, they shall forfeit for every such omission the sum of twenty pounds.

Annual account to be made up, and a copy transmitted to the clerk of the peace, &c.

RATING OF RAILWAYS.

By 43 Eliz. c. 2, s. 1, it is enacted that the sums for the relief of the poor are to be raised by "taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, or propriations of tithes, coal mines, or saleable underwoods in the said parish."

Railway companies are rateable as occupiers of land: (*Reg. v. Fletton*, 30 L. J. M. C. 89; and *Reg. v. Lord Sherard*, 33 L. J. M. C. 5.) But a company which merely has running powers over a line is not an occupier, but has only an easement, and is therefore not rateable: (*Reg. v. Midland Railway Co.*, 11 L. T. N. S. 303.)

Railway companies are occupiers of land. But not a company which has running powers only.

The Parochial Assessment Act, 6 & 7 Will. IV. c. 96, s. 1, enacts that "No rate for the relief of the poor in England or Wales shall be allowed by any justices or be of any force which shall not be

Rate to be made on net annual value.

- 8 & 9 VICT. c. 20. made upon an estimate of the net annual value of the several hereditaments rated thereunto; that is to say, of the rent at which the same may reasonably be expected to let from year to year free of all usual tenants' rates, and taxes, and tithe commutation rent-charge, if any, and deducting therefrom the probable annual average cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent."
- Stock-in-trade not rateable. And by 3 & 4 Vict. c. 89, which was originally enacted for a limited period, but has been continued in force by various acts, (see 31 & 32 Vict. c. 111,) it is provided "That it shall not be lawful for the overseers of any parish, township, or village to tax any inhabitant thereof as such inhabitant in respect of his ability derived from the profits of stock-in-trade, or any other property, for or towards the relief of the poor. Provided always that nothing in this act contained shall in anywise affect the liability of any parson or vicar, or of any occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods to be taxed for and towards the relief of the poor."
- Value of property within parish may depend on external circumstances. The rate is only to be imposed on property within the parish, but every circumstance which increases the value of that property, whether arising within or without the parish, must be taken into account. Thus, where a railway passes through a parish, but has no station there, its value in a great measure depends upon the stations outside the parish, and it is rateable upon that value: (*Reg. v. London and South-Western Railway Co.*, 1 Q. B. 558.) The basis of the rate is the clear annual value, or the net rent at which the property might reasonably be expected to let to a tenant.
- Fares as well as tolls form part of gross receipts. In finding the gross value of the property in the parish, which is the first step in the calculation, the fares as well as the tolls must be taken into account: (*R. v. Grand Junction Railway Co.*, 4 Q. B. 18, and 13 L. J. M. C. 94; and *R. v. London and South-Western Railway Co.*, 1 Q. B. 558.) There were two methods of ascertaining these, called respectively the mileage and the parochial. By the first method you took the gross receipts on the whole line, and charged to the portion of the line within the rating parish such proportion as the length of railway in the parish bore to the length of the whole line. By the second or parochial method you ascertained what portion of the gross receipts were actually earned within the parish. It is obvious that the results obtained by these two methods would widely differ, and that some parishes, say on the London and North-Western line, would get far more than their fair share of rates if the mileage system were adopted. The Court of Queen's Bench, therefore, hold that the parochial system is the proper one. This was first decided in the case of canals before the time of railways: (*Rex. v. Kingswinford*, 7 B. & C. 237.) For some time after railways were formed the companies kept their accounts purposely shrouded in mystery, so that it was impossible to discover the figures required for the parochial system of valuation. In time this mode of keeping accounts was changed, and then the question which of the two modes of computation was right was fought out in the Queen's Bench, and definitely settled by the judgment given in the three cases of *Reg. v. London, Brighton, and South-Coast Railway Co.*, *Reg. v. South-Eastern Railway Co.*, and
- Rate must be made on the parochial basis.

Reg. v. Midland Railway Co., which were all argued, and one judgment given on the whole, (15 Q. B. 313,) in favour of the parochial system. There is no difficulty in keeping railway companies books so as to show the half-yearly earnings between station and station. (See Cripp's "How to Rate a Railway," page 20.)

The rate is to be made in the parish where the profits are earned, and not where received: (*R. v. Barnes*, 1 B. & Ad. 116.)

The prime cost of the railway is quite immaterial, since it may have been injudiciously expended, and what was costly may have become worthless by subsequent changes: (*R. v. Mile End, Old Town*, 10 Q. B. 218.)

It was enacted by an act of Parliament, local, personal, and public, that each of two railways, viz., the London, Brighton, and South Coast Railway and the South-Eastern Railway Co., should have free use of a given portion of the other's line. The portions of the respective lines lay in different parishes. It was held, that each company was to be rated for the value of the given portion of its own line at the amount which the other would have had to pay if it had hired the right of using such portion, and that no deduction was to be made for a supposed rent paid for the corresponding easement on the other's line: (*Reg. v. London, Brighton, and South Coast Railway Co.*, 15 Q. B. 313.)

In *The Queen v. Vestry of St Pancras*, (3 B. & S. 810,) the North London Railway Co. were the appellants against a rate made under the following circumstances:—The appellants' railway, after passing through the respondents' parish, joins the London and Blackwall Railway, which formed the only access of the North London Railway to London. By arrangement with the London and Blackwall Railway, the appellants carried their passengers over the London and Blackwall Railway, paying a certain toll per passenger. They charged their passengers but one fare for conveyance from any part of their line to any other part of their line, or to any part of the London and Blackwall line. Held, that the toll paid to the London and Blackwall Railway must be deducted from the rateable value.

A railway company is not liable to be rated on a toll which, though authorised, they do not levy: (*Reg. v. Stockton and Darlington Railway Co.*, 8 L. T. N. S. 422.)

Leaving the branch lines out of consideration for the present, we have now the first element in the rateable value of railways—viz., their gross earnings in the parish where the rate is to be made; those earnings including fares, tolls, and rent, paid by other companies for the use of the line, whether it be paid in money or in kind.

From this gross sum, numerous deductions have to be made before we can arrive at the net annual value of the hereditaments occupied by the railway which is the only part of the property which is rateable. The Court of Queen's Bench refuse to interfere with the amount of the several deductions allowed by the Quarter Sessions, confining themselves to saying what are proper items of deduction. See *R. v. Grand Junction Railway Co.*, 4 Q. B. 18. In that case the Sessions had made the following deductions, and the Court of Queen's Bench held that they included all that were properly referable to trade, and that the Sessions might fairly infer that a yearly tenant would give the balance as rent. The deductions were—

Rate to be made where profits are earned.

Prime cost of railway immaterial.

How to rate in case of mutual running powers in different parishes.

Where one railway receives a through fare, part of which it pays to another company, the fare it pays must be deducted from its receipts.

Toll not levied though authorised.

Deductions from gross receipts. Queen's Bench will not interfere as to amount.

s. 9 VICT. c. 20.

Value of stock
must be taken
at time rate is
made.

Tenants' profits.

No percentage
allowed on things
attached to free-
hold or intended
permanently to
remain con-
nected with
the railway.
Percentage
for annual
depreciation.

Expenses of
conducting the
business.

First, Interest on the capital invested in the movable stock of the company. The Sessions allowed 5 per cent., and this sum appears to be the usual allowance. The parish officers are bound to take the value of the stock at the time the rate is made: (*Reg. v. Great Western Railway Co.*, 6 Q. B. 179.)

Secondly, A percentage on the same capital for tenants' profits and profits of trade. The amounts allowed for this have varied from 10 to 20 per cent.; this too must be calculated on the actual value of the rolling stock at the time the rate is made: (*Reg. v. North Staffordshire Railway Co.*, 30 L. J. M. C. 68.) No percentage is allowed on things attached to the freehold so as to become part of it, or on things which, though capable of being removed, it is intended shall permanently remain connected with the railway: (*Ibid.*; and *Reg. v. Southampton Dock Co.*, 17 Q. B. 83.)

Thirdly, A percentage on the same sum for annual depreciation of stock beyond ordinary annual repairs. The sum allowed in the case we are now considering, (*Reg. v. Grand Junction Railway Co.*) was £12, 10s. per cent. In *Reg. v. London, Brighton, and South Coast Railway Co.*, 10 per cent. was allowed by the Sessions: (15 Q. B. 313; 20 L. J. Q. B. 189.)

Fourthly, Expenses of conducting the business:—These of course embrace various items, which are generally classified under nine heads, viz.:—

1. Maintenance of way.
2. Gradual depreciation of way.
3. Locomotive and carriage account.
4. Carrying account and general charges.
5. Rent of stations.
6. Direction and office expenses.
7. Compensation returns and allowances.
8. Government duty.
9. Rates and taxes.

It will be convenient to notice these items *seriatim*, which include the two other deductions allowed in *Reg. v. Grand Junction Railway Co.*—viz., the fifth the rent of stations rated separately; and the sixth the gradual depreciation of the way.

Maintenance of
permanent way.

(1.) The cost of maintaining the permanent way ought, strictly speaking, to be allowed on the parochial system, by finding out what is the actual cost of maintaining that portion of it which is in the rating parish; but in practice a mileage division of the expense of maintaining the whole line is adopted.

Depreciation of
way.

(2.) Gradual depreciation of way:—The Parochial Assessment Act provides for a deduction of the probable annual average cost of repairs necessary to maintain the premises in a condition to command the net rent—see *ante*. This formed the sixth item allowed in *Reg. v. Grand Junction Railway Co.*, *supra*; but it is more convenient to place it here. The railway company is entitled to this deduction, although they may not actually have set aside any sum from their revenue for the purpose: (*Reg. v. London, Brighton, and South Coast Railway Co.*, 15 Q. B. 313 S. C.; 20 L. J. M. C. 124; and *Reg. v. Great Western Railway Co.*, 15 Q. B. 1085; and 21 L. J. M. C. 84; overruling on this point, *Reg. v. Great Western Railway Co.*, 6 Q. B. 179; and 15 L. J. M. C. 80.) The proper amount

to be allowed can be obtained from the contractors, or the books of s & v 107. c. 29. the company. A mileage deduction is usually made.

(3.) Locomotive and carriage account:—This includes all the expenses necessary to the working, maintaining, and renewal of the locomotives and carriages. The accounts of the company will show the total of this charge for the whole line. The next step is to ascertain the number of miles run by all the locomotives over the whole line, and then, by dividing the gross sum by the number of miles, we find the cost per mile. The books of the company will tell how many times the engine passed through the rating parish in the course of the year; and this, multiplied by the cost per mile, will be the proper deduction to make.

(4.) Carrying account and general charges:—This includes the wages of policemen, porters, clothing, gas, tickets, &c., &c. These charges, together with the next item—viz.,

(5.) Rent of stations—must be apportioned to the traffic which has made use of the station. The company's books will show the gross receipts at any station, and what stations have been used to earn the receipts in the rating parish.

(6.) Direction and office expenses:—These are generally distributed upon the mileage principle.

(7.) Compensation returns and allowances:—This item was allowed in the case of *Reg. v. Great Western Railway Co.*, 6 Q. B. 179; 15 L. J. M. C. 80.

(8.) Government duty.

(9.) Rates and taxes.

When all these deductions have been made, the balance gives the fair rateable value of the line.

The method of rating branch lines remains to be dealt with. Where the branch is incorporated into the whole line, and worked as an undistinguished part, it must be rated in the same way as any other portion of the main line: (*Reg. v. Great Western Railway Co.*, 15 Q. B. 1085; and 21 L. J. M. C. 84.)

Where the main line guarantees the branch a certain dividend, that guarantee must not be taken into account in rating the branch; but it must be rated as an independent line: (*Newmarket Railway Co. v. Parish of St Andrews the Less, Cambridge*, 3 E. & B. 94; 23 L. J. M. C. 76.)

The line of the Reading, Guildford, and Reigate Railway Co. was, under an act of Parliament, let to the South-Eastern Railway Co., at an agreed rent for one thousand years. By a subsequent act the two companies were amalgamated, and in lieu of the rent formerly paid to the Reading Company, the shareholders became entitled to annuities equivalent in amount to the rent chargeable on the funds of the amalgamated company, of which the Reading line now became a branch. Two rates were in dispute, one made before the amalgamation, and one made afterwards. The first question for the Court was, whether the rent during the period, when the line was on lease, was the proper criterion of the rateable value of the branch line, and it was held by the whole Court that it was not, as the rate ought to be on the present annual value of the property, which might be more or less than the sum the parties had agreed to give.

Traffic was brought on to the main line by the Reading branch,

§ 49 VICT. c. 20 and profit was thus obtained by the South-Eastern Railway Company; and it was found as a fact that if the Reading line were in the market it would be an object of competition between the South-Eastern line and rival companies. The second and third questions were, whether these matters should be taken into account in estimating the rateable value of the part of the Reading line within the parish, or whether the rates should be solely on the profits of the line itself. It was held by Campbell, C. J., Coleridge and Crompton, J.J., that both of these matters should be taken into account, inasmuch as though lying out the parish, they enhanced the value of that within the parish. Erle, J., *dissentiente*, held that only the earnings within the parish ought to be considered in making the rate, and that any profits arising from the branch outside the parish ought to be rated in the parish where it was earned.

In *London and North-Western Railway Co. v. Cannock*, 9 L. T. N. S. 325, it was held that when the branch produced no profit but was leased to a main line at a fixed rent, it was liable to be rated not merely with respect to earnings within the parish, but also in respect to its value as bringing traffic to the main line.

Stations usually;
rated separately

The railway stations are usually rated separately, and a portion of the receipts at each station is set aside in the company's books for rent of station. This, less rates and taxes, is the sum at which they should be rated: Cripps on How to Rate a Railway, p. 38.

When no profit
is made on rail-
way.

If no profit is made on the railway it must be assessed on the value of the land as agricultural land: (*R. v. Parrott*, 5 Term Rep. 593; *Reg. v. Vange*, 3 Q. B. 242; and 11 L. J. M. C. 117.)

In concluding the notes upon this subject, it may be remarked that it is a most unsatisfactory subject for legal treatment. This arises from the mixture of law and facts. Each railway has to be dealt with upon its own footing, and no general rule can be laid down. The Queen's Bench resolutely abstains from interfering as to the sufficiency of the various items in the calculation, which it holds to be a matter entirely for the Quarter Sessions, and experience can alone guide as to the various views which are or may be taken in different counties. The above summary professes only to deal with the decided cases in the Queen's Bench, not with those decided at the Quarter Sessions.

BYE-LAWS.*

Bye laws.

And with respect to the regulating of the use of the railway, be it enacted as follows:—

Company to
regulate the use
of the railway.

CVIII. It shall be lawful for the company, from time to time, subject to the provisions and restrictions in this and

* The Board of Trade have issued a form of bye-laws, which will be found in the Appendix, and which are adopted by most of the railway companies; any variation from this form must have the sanction of the Board of Trade.

the special act contained, to make regulations for the following purposes; (that is to say,) fol- s & 9 VICT. c. 29.

For regulating the mode by which and the speed at which carriages using the railway are to be moved or propelled;

For regulating the times of the arrival and departure of any such carriages;

For regulating the loading or unloading of such carriages, and the weights which they are respectively to carry;

For regulating the receipt and delivery of goods and other things which are to be conveyed upon such carriages;

For preventing the smoking of tobacco (*a*) and the commission of any other nuisance, in or upon such carriages, or in any of the stations or premises occupied by the company;

And, generally, for regulating the travelling upon or using and working of the railway:

But no such regulation shall authorise the closing of the railway, or prevent the passage of engines or carriages on the railway, at reasonable times, except at any time when in consequence of any of the works being out of repair, or from any other sufficient cause, it shall be necessary to close the railway or any part thereof.

(*a*) And as to smoking compartments, see the form of bye-laws issued by the Board of Trade in the Appendix, *post*.

CIX. For better enforcing the observance of all or any of such regulations, it shall be lawful for the company, subject to the provisions of an act passed in the fourth year of the reign of her present Majesty, intituled, "An Act for Regulating Railways" (*a*), to make bye-laws, and from time to time to repeal or alter such bye-laws, and make others, provided that such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special act (*b*); and such bye-laws shall be reduced into writing, and shall have affixed thereto the common seal of the company; and any person offending against any such bye-laws shall forfeit for every such offence any sum not exceeding five pounds, to be imposed by the company in such bye-laws as a penalty for any such offence; and if the infraction or nonobservance of any such bye-law or

Power to make regulations by bye-laws.
5 & 4 VICT. c. 97.

8 & 9 VICT. c. 20. other such regulation as aforesaid be attended with danger or annoyance to the public, or hindrance to the company in the lawful use of the railway, it shall be lawful for the company summarily to interfere to obviate or remove such danger, annoyance, or hindrance, and that without prejudice to any penalty incurred by the infraction of any such bye-law.

(a) See ss. 8-10 of 3 & 4 Vict. c. 97, Appendix, *post*.
 d bye-laws. (b) A bye-law that no passenger should be allowed to enter or travel in a carriage without having paid his fare and obtained a ticket, which he should give up on demand; and that any passenger not so producing or delivering up his ticket should be required to pay the fare from the place whence the train originally started, or forfeit a sum not exceeding 40s., would be illegal and void under this section, as repugnant to s. 103, if not held to be confined to the case of a passenger having and wilfully refusing to produce or give up his ticket, and not extending to the case of a person travelling without having paid for and obtained a ticket with no intention to defraud the company: (*Deardon v. Townsend*, L. R. 1 Q. B. 10.)

A bye-law which would exempt a railway company from responsibility for passengers' luggage is void: (*Great Western Railway Co. v. Goodman*, 12 C. B. 313; *Williams v. Great Western Railway Co.*, 10 Exch. 15.) And a bye-law of a canal company prohibiting all navigation on Sundays was held illegal and void: (*Calder, &c., Navigation Co. v. Pilling*, 14 M. & W. 76; 3 R. C. 735.)

And see the notes to the preceding section, and to s. 124 of the Companies Clauses Act, *ante*, p. 112.)

Publication of
such bye-laws.

CX. The substance of such last-mentioned bye-laws, when confirmed or allowed according to the provisions of any act in force regulating the allowance or confirmation of the same, shall be painted on boards, or printed on paper and pasted on boards, and hung up and affixed and continued on the front or other conspicuous part of every wharf or station belonging to the company (a), according to the nature or subject-matter of such bye-laws respectively, and so as to give public notice thereof to the parties interested therein or affected thereby; and such boards shall from time to time be renewed as often as the bye-laws thereon or any part thereof shall be obliterated or destroyed; and no penalty imposed by any such bye-law shall be recoverable unless the same shall have been published and kept published in manner aforesaid.

What is sufficient publication?

(a) On appeal against a conviction under a bye-law prohibiting passengers getting out of or into a carriage whilst in motion, it was held sufficient to show that copies of the bye-laws were properly

fixed at the stations at which the convicted party entered and 8 & 9 Vict. c. 20. quitted the train, without showing further that copies were fixed at every other station on the line: (*Motteram v. Eastern Counties Railway Co.*, 7 C. B. N. S. 58; 29 L. J. M. C. 57.)

An examined copy of the bye-laws is receivable in evidence as a public document under 14 & 15 Vict. c. 99: (*Ibid.*)

CXI. Such bye-laws, when so confirmed, published, and affixed, shall be binding upon and be observed by all parties, and shall be sufficient to justify all persons acting under the same; and for proof of the publication of any such bye-laws it shall be sufficient to prove that a printed paper or painted board, containing a copy of such bye-laws, was affixed and continued in manner by this act directed, and in case of its being afterwards displaced or damaged then that such paper or board was replaced as soon as conveniently might be.

Such bye laws to be binding on all parties.

As to the responsibility of railway companies for the wrongful acts of their servants, in the execution of bye-laws, see notes to s. 154, *post*.

LEASING OF RAILWAYS.

And with respect to leasing the railway, be it enacted as follows:—

Leasing of Railway.

CXII. Where the company shall be authorised by the special act (a) to lease the railway or any part thereof to any company or person, the lease to be executed in pursuance of such authority shall contain all usual and proper covenants on the part of the lessee for maintaining the railway, or the portion thereof comprised in such lease, in good and efficient repair and working condition during the continuance thereof, and for so leaving the same at the expiration of the term thereby granted, and such other provisions, conditions, covenants, and agreements as are usually inserted in leases of a like nature.

Exercise of power to lease the railway.

(a) It will be seen on reference to s. 87, *ante*, that a railway company are thereby authorised to enter into working agreements with another company; but it has been decided in several cases, collected in the notes to that section, (p. 397, *ante*), that no such agreement is valid, if it amount to a transference of powers, or a lease, or an agreement for a lease: (See particularly the cases of *Beman v. Rufford*, 7 R. C. 48; 1 Sim. N. S. 550; *Great Northern Railway Co. v. Eastern Counties Railway Co.*, 9 Hare, 306; *East Anglian Railway Co. v. Eastern Counties Railway Co.*, 11 C. B. 775; *Shrewsbury and Birmingham Railway Co. v. London and North-Western Railway Co.*, 6 H. L. 113.)

442 *Railways Clauses Consolidation Act, 1845, ss. 112, 113.*

8 & 9 VICT. c. 20.

London and
Brighton Rail-
way Co. v. Lon-
don and South-
Western Rail-
way Co.

Agreement to
work line for
term of years.

Recital in subse-
quent act of
terms of lease.

Conditions pre-
cedent to exer-
cising power.

Powers vested in
the company may
be exercised by
the lessees.

So where two railway companies became, by virtue of an act of Parliament, jointly entitled to a line, to be managed by a joint-committee, each of the two companies being at liberty to use the joint line for all purposes necessary for the traffic of the company so using it, it was held that an agreement, subsequently entered into, by which one of the companies was to have the exclusive use of the joint line at a yearly rent, was *ultra vires* and illegal: (*London, Brighton, &c., Railway Co. v. London and South-Western Railway Co.*, 4 De G. & J. 362.)

In like manner an agreement, by which one company's line was to be worked for ninety-nine years, was held to be a delegation of powers and illegal, though an agreement to apply to Parliament for powers to lease, or to work upon such terms, would be valid: (*Winch v. Birkenhead Railway Co.*, 5 De G. & Sm. 562; 7 R. C. 384.) But see *MacGregor v. Dover and Deal Railway Co.*, (18 Q. B. 618; 7 R. C. 227,) in which a contract by a railway company to pay the costs of a certain application by other parties to Parliament, for an act to authorise the construction of another line if such application should fail, and to take a lease of the line if it should prove successful, was held to be void. (As to the power of railway companies to solicit and to oppose bills, see the notes to the Companies Clauses Act, 1845, s. 90, *ante*, pp. 82, 83.)

As to whether the terms of a lease, entirely or partly in excess of the powers granted by the company's act, are confirmed or sanctioned by the recognition or recital of them, in a subsequent act of Parliament, see *Galloway v. Mayor, &c., of London*, (L. R. 1 H. L. 34.)

In a recent case where a company had power to take a lease from another company, provided the rents were not paid out of any fund, except that applicable to dividends, and that such payment did not affect any fund applicable to dividends on any separate undertaking, and provided also that a certificate of the Board of Trade of the fact that a certain part of the capital of the leasing company had been paid up, it was held that certain heads of arrangement, whereby the intended lessees were to work the lessors' line at a yearly rent, no certificate of the Board of Trade having been obtained in accordance with the provisions of the act, were originally invalid; and that the recognition of them by a subsequent act, noticing and reciting them, and repealing the provision as to the necessity of the certificate, did not ratify the illegal agreement: (*Kent Coast Railway Co. v. London, Chatham, and Dover Railway Co.*, L. R. 3 Ch. 656.)

CXIII. Such lease shall entitle the company or person to whom the same shall be granted to the free use of the railway or portion of railway comprised therein, and during the continuance of any such lease all the powers and privileges granted to and which might otherwise be exercised and enjoyed by the company, or the directors thereof or their officers, agents, or servants, by virtue of this or the special act, with regard to the possession, enjoyment, and management of the railway, or of the part thereof comprised in such lease, and the tolls to be taken

thereon, shall be exercised and enjoyed by the lessee, and the officers and servants of such lessee, under the same regulations and restrictions as are by this or the special act imposed on the company, and their directors, officers, and servants; and such lessee shall, with respect to the railway comprised in such lease, be subject to all the obligations by this or the special act imposed on the company.

A railway company taking a lease of another line, has been held entitled to the benefit of an agreement entered into by the company, of whose line they became lessors for the use of a part of a third company's line, although thus enabled to compete with the third company: (*London and South-Western Railway Co. v. South-Eastern Railway Co.*, 8 Exch. 584.) Also of an agreement that the trains of a third company should stop at a junction for the purpose of meeting corresponding trains of the lessor company: (*West London Railway Co. v. London and North-Western Railway Co.*, 11 C. B. 327.)

Lessees entitled to benefit of agreements entered into by lessors.

Where a railway company became lessees of the line of another company, and thereby entitled to the benefit of an agreement entered into by a third company to stop their trains for the purpose of meeting corresponding trains of the lessor company, and covenanted in their lease that they would, "at their own expense, during the continuance of the lease, efficiently work and repair the railway and works thereby demised, and indemnify the West of London Railway [the lessor] Company against all liabilities, loss, charges and expenses, claims and demands, whether incurred or sustained in consequence of any want of repair, or in consequence of not working, or in any manner connected with the working of the same railway or works; but the West of London Railway Company shall have no control whatever over the working or management" by the lessees of the line or works leased; it was held that, in order to perform their covenant to work efficiently, the lessees were not bound under all circumstances to work the line for passenger traffic; but that, if as much gross proceeds could be obtained by efficiently working the railway for goods only as for passengers only, or for both passengers and goods, the covenant was well performed, (*Platt and Martin, B.B.*, not concurring;) that although the lessees had power to stop the trains of the third company, they were not necessarily bound to exercise it as part of the efficient working of the line demised; but that the obligation of the lessees under their covenant was not limited to the indemnification of the petitioners from the obligations cast upon them by their acts of incorporation, and that the lessees were bound to work the line efficiently, so as to secure the stipulated benefits to the petitioners in the share of gross proceeds, although they were not compelled to work it so as to produce the largest quantity of gross proceeds; that there was no covenant in the lease to bind the lessees to work the demised line in connexion with either or both their own or the third company's line; but that it would be for the jury to say whether or not they could practically work the line efficiently without some connexion with one or other of those railways; and

Covenant in lease to work line efficiently.

444 *Railways Clauses Consolidation Act, 1845, ss. 114, 115.*

8 & 9 VICT. c. 20. that, for the purpose of considering the liability of the lessees, they were not to be treated by the jury as if they were lessees of a separate and independent line, having no control over the other two railways; but that the covenant to work the demised line efficiently must be construed with a reference to the subject-matter and the character of the defendants: (*West London Railway Co. v. London and North-Western Railway Co.*, 11 C. B. 327 in the Exchequer Chamber.)

CARRIAGES AND ENGINES.

Carriages and Engines.

Engines to consume their smoke.

And with respect to the engines and carriages to be brought on the railway, be it enacted as follows:—

CXIV. Every locomotive steam-engine to be used on the railway shall, if it use coal or other similar fuel emitting smoke, be constructed on the principle of consuming and so as to consume its own smoke; and if any engine be not so constructed, the company or party using such engine shall forfeit five pounds for every day during which such engine shall be used on the railway (a).

Penalty.

(a) The penalty only attaches where the engine using coal, &c., is so constructed as not to consume its own smoke when used with proper care and under ordinary circumstances. Therefore, where an engine is properly constructed, but owing to the carelessness of the persons using it the smoke is emitted instead of being consumed, there is no liability to the penalty under this section: (*Manchester, &c., Railway Co. v. Wood*, 2 E. & E. 344; 29 L. J. M. C. 29.)

Liability for injuries caused by sparks emitted.

If the use of locomotive steam-engines is authorised by act of Parliament, the company using an engine of that sort are not responsible for injury done by sparks emitted from it, if every reasonable precaution has been taken to prevent such injury: (*Vaughan v. Taff Railway Co.*, 5 H. & N. 679.)

But if a company be not expressly authorised by act of Parliament to run locomotive steam-engines, they are liable for injuries caused in such a manner, although guilty of no actual negligence in the management of the engine. To exempt the company from liability in such a case, it is not sufficient that the use of such engines is not forbidden by their act of Parliament—it must be expressly authorised: (*Jones v. Festiniog Railway Co.*, 18 L. T. N. S. 902.)

Engines to be approved by the company, and certificate of approval given.

CXV. No locomotive or other engine, or other description of moving power, shall at any time be brought upon or used on the railway unless the same have first been approved of by the company (a); and within fourteen days after notice given to the company by any party desirous of bringing any such engine on the railway the company

shall cause their engineer or other agent to examine such engine at any place within three miles distance from the railway to be appointed by the owner thereof, and to report thereon to the company; and within seven days after such report, if such engine be proper to be used on the railway, the company shall give a certificate (b) to the party requiring the same of their approval of such engine; and if at any time the engineer or other agent of the company report that any engine used upon the railway is out of repair, or unfit to be used upon the railway, the company may require the same to be taken off, or may forbid its use upon the railway until the same shall have been repaired to the satisfaction of the company, and upon the engine being so repaired the company shall give a certificate to the party requiring the same of their approval of such engine; and if any difference of opinion arise between the company and the owner of any such engine as to the fitness or unfitness thereof for the purpose of being used on the railway, such difference shall be settled by arbitration.

s 8 & 9 VICT. c. 20.

Unfit engines to be removed.

(a) A company having a traffic arrangement with another company is liable to the provisions of this section, and is subject to be restrained by injunction if it should send on to the line engines not approved thereunder: (*Midland Railway Co. v. Ambergate Railway Co.*, 10 Hare, 359.)

Injunction in case improper engines are brought on to the line.

(b) It does not appear that after a neglect in complying with the requirements of s. 115, a subsequent certificate of the company's engineer would obviate the difficulty: (*Ibid.*)

Engineer's certificate.

CXVI. If any person, whether the owner or other person having the care thereof, bring or use upon the railway any locomotive or other engine, or any moving power, without having first obtained such certificate of approval as aforesaid, or if, after notice given by the company to remove any such engine from the railway, such person do not forthwith remove the same, or if, after notice given by the company not to use any such engine on the railway, such person do so use such engine, without having first repaired the same to the satisfaction of the company, and obtained such certificate of approval, every such person shall, in any of the cases aforesaid, forfeit to the company a sum not exceeding twenty pounds (a); and in any such case it shall be lawful for the company to remove such engine from the railway.

Penalty for using improper engines.

(a) The remedy given by this section is cumulative, and does not

Remedy cumulative.

s & 9 VICT c 20. take away the common law right of the company to seize an uncertified engine, damage feasant, and keep it as a pledge for compensation for the damage done : (*Ambergate, &c., Railway Co. v. Midland Railway Co.*, 2 E. & Bl. 793 ; 23 L. J. Q. B. 17.)

In such a case, to an action against the company for the conversion of the petitioner's engine, it was held a good plea that the petitioner demanded it to be given back to him for the purpose of using it on the line of railway. The company had a right to refuse to give it up for that illegal purpose : (*Ibid.*)

Carriages to be constructed according to company's regulations.

CXVII. No carriage shall pass along or be upon the railway, (except in directly crossing the same, as herein or by the special act authorised,) unless such carriage be at all times, so long as it shall be used or shall remain on the railway, of the construction and in the condition which the regulations of the company for the time being shall require ; and if any dispute arise between the company and the owner of any such carriage as to the construction or condition thereof, in reference to the then existing regulations of the company, such dispute shall be settled by arbitration.

Regulations to apply also to company's carriages.

CXVIII. The regulations from time to time to be made by the company respecting the carriages to be used on the railway shall be drawn up in writing, and be authenticated by the common seal of the company, and shall be applicable alike to the carriages of the company and to the carriages of other companies or persons using the railway ; and a copy of such regulations shall, on demand, be furnished by the secretary of the company to any person applying for the same.

See note to s. 116, *ante*.

Penalty for using improper carriages.

CXIX. If any carriage, not being of such construction or in such condition as the regulations of the company for the time being require, be made to pass or be upon any part of the railway, (except as aforesaid,) the owner thereof or any person having for the time being the charge of such carriage, shall forfeit to the company a sum not exceeding ten pounds for every such offence, and it shall be lawful for the company to remove any such carriage from the railway.

See note to s. 116, *ante*.

Owner's name, &c., to be registered, and ex-

CXX. The respective owners of carriages using the railway shall cause to be entered with the secretary or oth-

officer of the company appointed for that purpose the names and places of abode of the owners of such carriages respectively, and the numbers, weights, and gauges of their respective carriages; and such owners shall also, if so required by the company, cause the same particulars to be painted in legible characters on some conspicuous part of the outside of every such carriage, so as to be always open to view; and every such owner shall, whenever required by the company, permit his carriage to be weighed, measured, or gauged at the expense of the company.

8 & 9 VICT. C. 20,
hibited on car-
riages.

CXXI. If the owner of any carriage fail to comply with the requisitions contained in the preceding enactment, it shall be lawful for the company to refuse to allow such carriages to be brought upon the railway, or to remove the same therefrom until such compliance.

On noncompli-
ance, carriage
may be removed.

CXXII. If the loading of any carriage using the railway be such as to be liable to collision with other carriages properly loaded, or to be otherwise dangerous, or if the person having the care of any carriage or goods upon the railway suffer the same or any part thereof to remain on the railway so as to obstruct the passage or working thereof, it shall be lawful for the company to cause such carriage or goods to be unloaded and removed in any manner proper for preventing such collision or obstruction, and to detain such carriage or goods, or any part thereof, until the expenses occasioned by such unloading, removal, or detention be paid.

Carriages impro-
perly loaded, or
suffered to ob-
struct the road,
may be unloaded
or removed.

CXXIII. The company shall not be liable for any damage or loss occasioned by any such unloading, removal, or detention as aforesaid, except for damage wilfully or negligently done to any carriage or goods so unloaded, removed, or detained; nor shall they be liable for the safe custody of any such carriage or goods so detained, unless the same be wrongfully detained by them, and then only for so long a time as the same shall have been so wrongfully detained.

Company not to
be liable for
damage by such
unloading, &c.

CXXIV. The respective owners of engines and carriages passing or being upon the railway shall be answerable for any trespass or damage done by their engines or carriages, or by any of the servants or persons employed by

Owners liable for
damage by their
servants.

8 & 9 VICT. c. 20. them, to or upon the railway, or the machinery or works belonging thereto, or to or upon the property of any other person; and every such servant or other person may lawfully be convicted of such trespass or damage before any two justices of the peace, either by the confession of the party offending, or upon the oath of some credible witness; and upon such conviction every such owner shall pay to the company, or to the person injured, as the case may be, the damage to be ascertained by such justices, so that the same do not exceed fifty pounds.

Owners may recover from servants.

CXXXV. It shall be lawful for any owner of an engine or carriage who shall pay the amount of any damage caused by the misfeasance or negligence of any servant or other person employed by him to recover the amount so paid by him from such servant or other person by the same means as the company are enabled to recover the amount of such damage from the owner of any engine or carriage.

ARBITRATION.

Arbitration.

Appointment of arbitrators when questions are to be determined by arbitration.

And with respect to the settlement of disputes by arbitration (a), be it enacted as follows:—

CXXXVI. When any dispute authorised or directed by this or the special act, or any act incorporated therewith, to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the company, under the hand of the secretary or any two of the directors of the company, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate, under the common seal of such corporation, and such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in

writing, in which shall be stated the matters so required to be referred to arbitration, shall have been served by the one party on the other party, to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties; and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and in such case the award or determination of such single arbitrator shall be final.

(a) See the Railway Companies Arbitration Act, 1859, (22 & 23 Vict. c. 59,) in the Appendix; and see the notes to s. 25 of the Lands Clauses Act, 1845, *ante*, pp. 167, *et seq.*

CXXVII. If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable to act, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or incapacity as aforesaid.

This section is similar to s. 26 of the Lands Clauses Act, *ante*, p. 169.

CXXVIII. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under this or the special act; and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

This section is similar to s. 27 of the Lands Clauses Act, *ante*, p. 169.

CXXIX. If in either of the cases aforesaid the said arbitrators shall refuse, or shall for seven days after request

450 *Railways Clauses Consolidation Act, 1845, ss. 130-133.*

s. 8 & 9 Vict. c. 20. of either party to such arbitration neglect to appoint an umpire, the Board of Trade shall, on the application of either party to such arbitration, appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special act, shall be final.

umpire, on neglect of the arbitrators.

This section is similar to s. 28 of the Lands Clauses Act, *ante*, p. 170.

In case of death of single arbitrator the matter to begin *de novo*. CXXX. If, where a single arbitrator shall have been appointed, such arbitrator shall die, or become incapable to act, before he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special act, in the same manner as if such arbitrator had not been appointed.

This section is the same as s. 29 of the Lands Clauses Act, *ante*, p. 171.

If either arbitrator refuse to act the other to proceed *ex parte*. CXXXI. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse, or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

Same as s. 30 of the Lands Clauses Act, *ante*, p. 171.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire. CXXXII. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time, if any, as shall have been appointed for that purpose by both such arbitrators under their hands, the matter referred to them shall be determined by the umpire to be appointed as aforesaid.

Same as s. 31 of the Lands Clauses Act, *ante*, p. 171.

Power for arbitrators to call for books, &c. CXXXIII. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may

examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose. s. 8 & 9 Vict. c. 20.

Same as s. 32 of the Lands Clauses Act, *ante*, p. 171.

CXXXIV. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him he shall, in the presence of a justice, make and subscribe the following declaration; that is to say, Arbitrator and umpire to make declaration.

‘I, A. B., do solemnly and sincerely declare, That I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the act, [*naming the special act.*]

‘A. B.

‘Made and subscribed in the presence of .’

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire, having made such declaration, shall wilfully act contrary thereto, he shall be guilty of a misdemeanour.

Same as s. 33 of the Lands Clauses Act, *ante*, p. 172.

CXXXV. Except where by this or the special act, or any act incorporated therewith, it shall be otherwise provided, the costs of and attending every such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators. Costs to be in the discretion of the arbitrators.

Same as s. 34 of the Lands Clauses Act, *ante*, p. 172.

CXXXVI. The submission to any such arbitration may be made a rule of any of the Superior Courts, on the application of either of the parties. Submission to arbitration may be made a rule of Court.

Same as s. 36 of the Lands Clauses Act, *ante*, p. 174.

CXXXVII. No award made with respect to any question referred to arbitration under the provisions of this or the special act shall be set aside for irregularity or error in matter of form. The award not to be set aside for matter of form.

Same as s. 37 of the Lands Clauses Act, *ante*, p. 174.

SERVICE OF NOTICES ON COMPANY.

CXXXVIII. And be it enacted, That any summons or notice, or any writ or other proceeding at law or in equity, Service of notices upon company.

8 & 9 Vict. c. 20. requiring to be served upon the company, may be served by the same being left at or transmitted through the post directed to the principal office (a) of the company, or one of their principal offices where there shall be more than one, or being given personally to the secretary, or in case there be no secretary, then by being given to any one director of the company (b).

Meaning of "principal office."

(a) The words "the principal office" indicate one particular office for the whole line, not an office for a traffic station: (*Per Lord Campbell, C. J., Garton v. Great Western Railway Co., E. B. & E. 837; 27 L. J. (Q. B.) 375.*)

Where by an act incorporating a railway company, it was to have two termini, one at Paddington and the other at Bristol; one of the two general half-yearly meetings to be held at Paddington, the other at Bristol, and an equal number of directors to be chosen from the residents near each place, but all the general business was transacted at Paddington, where the secretary resided, and orders were issued, it was held that service of a notice of action at the Bristol office was bad, and that Paddington was the only "principal office" of the company within this section: (*Ibid.*)

Service of notice where part of line in Scotland;

(b) When the English Lands Clauses Consolidation Act was incorporated so far as was necessary to the English portion of the line in the special acts of a railway company whose line, with the exception of six miles, was in Scotland, and their principal office there, it was held that a writ of summons served upon the company's secretary whilst attending a meeting in London was good service: (*Wilson v. Caledonian Railway Co., 5 Exch. 822; 20 L. J. (Exch.) 7; 6 R. C. 772.*) But where the act constituting an Irish railway contained a provision similar to the present, service of an English writ of summons upon a director of the company in London was held bad, and a judgment founded on it was set aside: (*Evans v. Dublin and Drogheda Railway Co., 14 M. & W. 142; 14 L. J. (Exch.) 245; 3 R. C. 760.*)

where line is in Ireland.

Proceedings in ejectment.

As to service of writs of ejectment, see the 168th and following sections of the Common Law Procedure Act, 1852, and the cases of *Doe d. Fisher v. Roe*, 10 M. & W. 21; *Doe d. Bayes v. Roe*, 16 M. & W. 98; *Doe d. Burgess v. Roe*, 4 D. & L. 311.

Proceedings in County Court.

With regard to proceedings in the County Court, it has been held that a railway company carries on its business only at its principal office, and cannot be sued in the County Court of a district where they have only a receiving office for parcels, conducted by an agent: (*Minor v. London and North-Western Railway Co., 1 C. B. N. S. 325; 26 L. J. (C. P.) 39; 28 L. T. 104;*) or even where they have a large station which is not their principal one: (*In re Brown v. London and North-Western Railway Co., 4 B. & S. 326; 11 W. R. 884; 10 Jur. N. S. 234; Adams v. Great Western Railway Co., 30 L. J. (Exch.) 124; 3 L. T. N. S. 631.*)

Tender of amends.

CXXXIX. And be it enacted, That if any party shall have committed any irregularity, trespass, or other wrong-

ful proceeding in the execution of this or the special act, s 8 & 9 VICT. c. 20. or any act incorporated therewith, or by virtue of any power or authority thereby given, and if before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the Court where such action shall be pending, at any time before issue joined, to pay into Court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into Court.

This section is the same as s. 135 of the Lands Clauses Act, *ante*, p. 298.

RECOVERY OF DAMAGES AND PENALTIES.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows:—

CXL. In all cases where any damages, costs, or expenses are by this or the special act, or any act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, or any other justice, on application, shall issue their or his warrant accordingly.

CXLI. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, and expenses payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company, and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no

Recovery of damages and penalties.

Provision for damages not otherwise provided for.

Distress against the treasurer.

454 *Railways Clauses Consolidation Act, 1845, ss. 141-143.*

— & 9 VICT. C. 20. such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company, coming into his custody or control, or he may sue the company for the same.

Method of proceeding before justices in questions of damages, &c.

CXLII. Where in this or the special act any question of compensation, expenses, charges, or damages, or other matter, is referred to the determination of any one justice or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties, or any of them, and their witnesses on oath; and the cost of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Publication of penalties.

CXLIII. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special act, or by any bye-law of the company affecting other persons than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application, shall cause such board to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been

published and kept published in the manner hereinbefore 8 & 9 Vict. c. 20.
required.

CXLIV. If any person pull down or injure any board put up or affixed as required by this or the special act for the purpose of publishing any bye-law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board. Penalty for defacing boards, used for such publication.

CXLV. Every penalty or forfeiture imposed by this or the special act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices; and on complaint being made to any justice he shall issue a summons requiring the party complained against to appear before two justices at a time and place to be named in such summons, and every such summons shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such summons, it shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit. Penalties to be summarily recovered before two justices.

CXLVI. If forthwith upon any such adjudication as aforesaid the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such justices, or either of them, shall issue their or his warrant of distress accordingly. Penalties to be levied by distress.

CXLVII. It shall be lawful for any such justice to order any offender so convicted as aforesaid to be detained Imprisonment in default of distress.

8 & 9 VICT. c. 20. and kept in safe custody until return can be conveniently made to the warrant of distress to be issued for levying such penalty or forfeiture and costs, unless the offender give sufficient security, by way of recognisance or otherwise, to the satisfaction of the justice, for his appearance before him on the day appointed for such return, such day not being more than eight days from the time of taking such security; but if before issuing such warrant of distress it shall appear to the justice, by the admission of the offender or otherwise, that no sufficient distress can be had within the jurisdiction of such justice whereon to levy such penalty or forfeiture and costs, he may, if he thinks fit, refrain from issuing such warrant of distress; and in such case, or if such warrant shall have been issued, and upon the return thereof such insufficiency as aforesaid shall be made to appear to the justice, then such justice shall by warrant cause such offender to be committed to gaol, there to remain without bail for any term not exceeding three months, unless such penalty or forfeiture and costs be sooner paid and satisfied.

Distress how to be levied.

CXLVIII. Wherein this or the special act, or any act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same, and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Distress not unlawful for want of form.

CXLIX. No distress levied by virtue of this or the special act, or any act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

CL. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's-rate of such parish, or if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied in aid of the poor's-rate of such extra-parochial place, or, if there shall not be any poor's-rate therein, in aid of the poor's-rate of any adjoining parish or district.

8 & 9 VICT. c. 20.
Application of
penalties.

CLL. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special act, or any act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.

Penalties to be
sued for within
six months.

See note to s. 142 of the Lands Clauses Act, *ante*, p. 201.

CLII. If through any act, neglect, or default on account whereof any person shall have incurred any penalty imposed by this or the special act, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and on nonpayment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly.

Damage to be
made good in
addition to
penalty.

CLIII. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special act, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable

Penalty on wit-
nesses making
default.

s & 9 Vict. c. 20. sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

Transient offenders.

CLIV. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special act, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient despatch, before some justice, without any warrant or other authority than this or the special act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

Liability of companies for wrongful acts of their servants.

Railway companies, as well as private individuals, who employ servants, are responsible for the tortious acts of the servants done in their employ. The general rule of law is, that a master is responsible for all acts done by his servant in the course of his employment, though without particular directions: (*per* Lord Holt, C. J., *Turberville v. Stampe*, 1 Lord Raym. 264;) the tests applicable for determining the liability of the master being,—is the servant “in the employ” of his master at the time of committing the grievance? (*per* Jervis, C. J., 13 C. B. 246;) was he authorised by his master to do the act complained of? (*Gordon v. Rolt*, 4 Exch. 365;) if so, the maxim *respondeat superior* applies. But the employer is not liable where an injury is committed by the servant *wilfully*, whilst neither employed in his master’s service, nor acting within the scope of his authority: (See *Lyons v. Martin*, 8 A. & El. 512; *Joel v. Morrison*, 6 C. & P. 501; *Gregory v. Piper*, 9 B. & C. 591;) nor where the relation of principal and agent has terminated before the commission of the act complained of: (*Brown v. Copley*, 8 Sco. N. R. 350.)

Agency.

False imprisonment by company’s servant.

Thus where a person was given into custody by the company’s ticket collector, under orders from the superintendent of the line, for having at the end of a return journey given up an old half ticket which he had put into his pocket by mistake for the right one, it was held that the company were liable for the false imprisonment: (*Goff v. Great Northern Railway Co.*, 30 L. J. (Q. B.) 148.) It was further held that from secs. 103, 104, of the present act, it might reasonably be assumed that a railway company, carrying passengers, would in the ordinary course of business, have on the spot officers with authority to determine, without delay, whether the company’s servants should, or should not, on the company’s behalf, apprehend a passenger accused of the offence of travelling without having paid his fare, with intent to avoid payment thereof; and that the fact of all the subordinate servants of the company referring to the superintendent of the line as the superior authority, was sufficient

Liability of Company for Tortious Acts of Servants. 459

evidence that he was an officer having authority from the company 8 & 9 VICT. c. 27. to act for them in the matter: (*Ibid.*)

In such a case the loss of a pair of race glasses, which the petitioner had left behind him in the railway carriage, when he was removed by the company's servants, was held to be damage too remote to be recovered in an action against the company: (*Glover v. London and South-Western Railway Co.*, L. R. 3 Q. B. 25.)

As to the removal of a drunken passenger with unnecessary violence, see *Seymour v. Greenwood*, 30 L. J. (Exch.) 189, 327, where the owner of an omnibus was held responsible for an act of this kind on the part of the conductor. Removal for drunkenness.

Where a servant of a railway company gave into custody a passenger who, at the end of his journey, refused to deliver up his ticket, or pay the fare, and the attorney of the company appeared before the magistrate to conduct the charge, it was held in an action of trespass against the company, that this act of their attorney did not amount to a ratification on their part of the unauthorised act of their servant: (*Eastern Counties Railway Co. v. Broom*, 6 Exch. 314; 6 R. C. 743.) Ratification.

Where, however, the servant has no authority to do the act complained of, and the company do not ratify it, they will not be held responsible for his wrongful act. Thus, in absence of proof, that the superintendent of a railway station was, either by general or particular instructions, authorised to arrest a passenger for not paying his fare, it was held that an action of trespass could not be maintained against the company for such a wrongful act on the part of their superintendent: (*Roe v. Birkenhead, &c., Railway Co.*, 7 Exch. 36; 6 R. C. 795.)

Where plaintiff took a ticket for himself as a passenger by defendants' railway, and by the same train a horse of the plaintiff's was conveyed, in respect of which (by a special agreement of the company) nothing was payable, and the plaintiff on leaving the station was taken into custody by direction of the stationmaster, for non-payment of the customary charge for a horse, it was held in an action against the company, for false imprisonment, that as the statute gave no power to arrest a person fraudulently neglecting to pay the charge for animals or goods, the company could not be presumed to have authorised an act, which they themselves had no authority to do, and therefore that they were not liable: (*Poulton v. London and South-Western Railway Co.*, 36 L. J. (Q. B.) 294; 17 L. T. N. S. 11.)

And where a quarrel arose on the premises of a railway company, between a servant of the company and a number of persons, one of whom was given into custody by the company's servant, on a charge of assault, and obstructing him in the discharge of his duty, it was held that the company could not be made responsible for this act of their servant: (*Lumsden v. London and South-Western Railway Co.*, 16 L. T. N. S. 109; *Nisi Prius*.)

CLV. The justices before whom any person shall be convicted of any offence against this or the special act, or any act incorporated therewith, may cause the conviction Form of conviction.

460 *Railways Clauses Consolidation Act, 1845, ss. 156-159.*

8 & 9 VICT. c. 20. to be drawn up according to the form in the schedule to this act annexed.

Proceedings not to be quashed for want of form, &c.

CLVI. No proceeding in pursuance of this or the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the Superior Courts.

See note to s. 145 of the Lands Clauses Act, *ante*, p. 302.

Parties allowed to appeal to Quarter Sessions on giving security.

CLVII. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special act, or any act incorporated therewith, such party may appeal to the general Quarter Sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognisances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the Court thereon.

Court to make such order as they think reasonable.

CLVIII. At the Quarter Sessions for which such notice shall be given the Court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following Sessions; and upon the hearing of such appeal the Court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Receiver of metropolitan police district to receive penalties incurred within his district.

CLIX. Provided always, and be it enacted, That notwithstanding anything herein or in the special act, or any act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special act, or any act

incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an act passed in the third year of the reign of her present Majesty, intituled, "An Act for Regulating the Police Courts in the Metropolis;" and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned act.

CLX. And be it enacted, That every person who, upon any examination upon oath, under the provisions of this or the special act, or any act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Persons giving false evidence liable to penalties of perjury.

CLXI. And be it declared and enacted, That all sums of money which have been or shall be paid into the Bank of Ireland in the name and with the privity of the Accountant-General of the Court of Chancery of Ireland, under the provisions of an act passed in the second year of the reign of her present Majesty, intituled, "An Act to Provide for the Custody of certain Moneys paid in pursuance of the Standing Orders of either House of Parliament by Subscribers to Works or Undertakings to be effected under the Authority of Parliament," shall and

Money paid into the Bank of Ireland to be exempt from ushers' poundage.

1 & 2 Vict. c. 117.

462 Railways Clauses Consolidation Act, 1845, ss. 162-165.

§ 49 VICT. c. 29. may be paid out and applied under any order of the said Court of Chancery exempt from ushers' poundage.

ACCESS TO SPECIAL ACT.

Access to special act.

And with respect to the provision to be made for affording access to the special act by all parties interested, be it enacted as follows:—

Copies of special act to be kept and deposited, and allowed to be inspected.

CLXII. The company shall at all times after the expiration of six months after the passing of the special act keep in their principal office of business a copy of the special act, printed by the printers to Her Majesty, or some of them: shall also within the space of such six months deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend a copy of such special act, so printed as aforesaid; and the said clerks of the peace shall receive, and they and the company respectively shall retain, the said copies of the special act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an act passed in the first year of the reign of her present Majesty, intituled, "An Act to compel Clerks of the Peace for Counties, and other Persons, to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament" (a).

7 WILL. IV. & 1 VICT. c. 51.

(a) See this act in the Appendix, p. i.

Penalty on company failing to keep or deposit such copies.

CLXIII. If the company shall fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Act not to extend to Scotland.

CLXIV. And be it enacted, That this act shall not extend to *Scotland*.

Act may be amended this session.

CLXV. And be it enacted, That this act may be amended or repealed by any act to be passed in the present session of Parliament.

SCHEDULE referred to by the foregoing Act.

8 & 9 VICT. c. 20.

To wit.
Be it remembered, That on the day of in
a year of our Lord A. B. is convicted before us,
D., two of Her Majesty's Justices of the Peace for the county of
[*here describe the offence generally, and the time and place*
and where committed,] contrary to the [*here name the special*
statute.] Given under our hands and seal, the day and year first above
written.

C.
D.

26 & 27 VICT.
c. 92.

THE RAILWAYS CLAUSES ACT, 1863.

(26 & 27 VICT. c. 92.)

An Act for consolidating in one Act certain provisions frequently inserted in Acts relating to railways.—[28th July 1863.]

WHEREAS the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation (Scotland) Act, 1845, respectively, were passed in order to comprise in one general act such provisions relating to railways in *England* or *Ireland*, or in *Scotland*, respectively, as were at the times of the passing of those acts usually introduced into acts of Parliament authorising the construction of railways:

And whereas sundry provisions of the like nature, but not comprised in the said general acts respectively, are now frequently introduced into acts of Parliament relating to railways, and it is expedient to comprise such last-mentioned provisions also in one general act, such act to be applicable to *England* or *Ireland*, or to *Scotland*, as the case may require, and that as well for the purpose of avoiding the necessity of repeating such provisions in special acts relating to railways, as for insuring greater uniformity in the provisions themselves:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

I. This act may be cited as the Railways Clauses Act 1863.

Division of act into parts.

II. This act shall be deemed to be divided into five parts, as follows:—

Part I. relating to construction of a railway:

- Part II. relating to extension of time ;
- Part III. relating to working agreements ;
- Part IV. relating to steam-vessels ;
- Part V. relating to amalgamation.

26 & 27 Vict.
c. 92.

PART I.

CONSTRUCTION OF A RAILWAY.

III. This part of this act shall apply to the railway authorised to be constructed by any special act hereafter passed and incorporating this part of this act.

Application of
Part I. and
interpretation of
terms.

In this part of this act—

All terms used have the same meanings as the same terms have when used in the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation (Scotland) Act, 1845, respectively:

The term “tidal river” means any part of a river within the flow and ebb of the tide at ordinary spring tides:

The term “tidal water” means any part of the sea or any part of a river within the flow and ebb of the tide at ordinary spring tides:

The term “tidal lands” means such parts of the bed, shore, or banks of a tidal water as are covered and uncovered by the flow and ebb of the tide at ordinary spring tides.

The provisions respecting the recovery of penalties contained in the said Railways Clauses Consolidation Acts respectively, as the case may require, shall be incorporated with this part of this act.

Alteration of Engineering Works.

IV. Notwithstanding anything in the said Railways Clauses Consolidation Acts, respectively, contained,—the company, in the construction of the railway, may deviate from the line or level of any arch, tunnel, or viaduct described on the deposited plans or sections, so as the deviation be made within the limits of deviation shown on those plans, and subject to the limitations contained in ss. 11, 12, and 15 of those acts respectively (a), and so as

Power to alter
engineering
works.

26 & 27 VICT.
c. 92.
—

the nature of the work described be not altered,—and may also substitute any engineering work not shown on the deposited plans or sections, for an arch, tunnel, or viaduct, as shown thereon; provided that every such substitution be authorised by a certificate of the Board of Trade; and the Board of Trade may grant such certificate in case it appears to them, on due inquiry, that the company has acted in the matter with good faith, and that the owners, lessees, and occupiers of the lands in which the substitution is intended to be made consent thereto, and also that the safety and convenience of the public will not be diminished thereby.

Provided, that nothing in the present section shall affect any power given to the company or to the Board of Trade by section eleven, twelve, fourteen, or fifteen (a) of the last-mentioned acts respectively.

(a) See *ante*, pp. 325-331.

Level Crossings.

Trains not to be
shunted over
level crossings.

V. Where the company is authorised by the special act to carry the railway across a turnpike road or public carriage-road on a level (a), it shall not be lawful for the company in shunting trains to pass any train over the level crossing, or at any time to allow any train, engine, carriage, or truck to stand across the same.

(a) See *ante*, p. 360.

Company to
erect lodge at
point of crossing.

VI. For the greater convenience and security of the public, the company shall erect and permanently maintain a lodge at the point where the railway crosses on the level the turnpike road or public carriage-road; and the company shall be subject to and shall abide by all such regulations with regard to the crossing thereof on the level, or with regard to the speed at which trains may pass the level crossing, as may from time to time be made by the Board of Trade.

If the company fails to erect, or to maintain, such lodge, or to appoint or keep a proper person to watch or superintend the level crossing, or to observe or abide by any such regulation as aforesaid, they shall for every such offence be liable to a penalty not exceeding twenty pounds, and also to a penalty of ten pounds for every day during

which the offence continues after the penalty of twenty pounds is incurred.

26 & 27 Vict.
c. 92.

VII. The Board of Trade may, if it appears to them necessary for the public safety, at any time after the passing of the special act, require the company, within such time as the Board of Trade directs, and at the expense of the company, to carry the turnpike road or public carriage-road either under or over the railway by means of a bridge or arch, instead of crossing the same on the level, or to execute such other works as, under the circumstances of the case, may appear to the Board of Trade best adapted for removing or diminishing the danger arising from the level crossing.

Board of Trade
may require
bridge instead of
level crossing.

Where the road is so carried either under or over the railway, it shall not be necessary for the company to erect or maintain a lodge at the point where the road is crossed, or to appoint a person to watch or superintend the crossing thereat, nor shall they be liable to any penalty for failure so to do.

VIII. If the Board of Trade certifies that the public safety requires that additional lands be taken by the company for the purpose of the work directed by the Board of Trade to be executed, the company may, subject to the provisions of the Lands Clauses Consolidation Act, 1845, or the Lands Clauses Consolidation (Scotland) Act, 1845, as the case may require, enter upon, take, and use, all or any part of the lands specified in the certificate of the Board of Trade as being necessary for the purpose of the work; and the Board of Trade, before issuing the certificate, shall cause at least three months' notice to be given to any person who may be entitled to claim under the last-mentioned acts, or otherwise, compensation in respect of the taking of such lands, or in respect of such work.

Power to com-
pany to take
additional land
for such work.

Junctions.

IX. Where the company is authorised by the special act to make a junction between the railway and any other railway, then and in every such case all interferences with the works of the other railway, necessary or convenient for effecting the junction, shall be made under the superintendence and to the reasonable satisfaction of the engineer

Communications
with other rail-
ways to be made
under the direc-
tion of the engi-
neer of these rail-
ways.

26 & 27 Vict.
c. 92.

for the time being of the company or person to whom the other railway belongs; and in case of any difference arising as to the mode of effecting the junction, the same shall be determined by a referee to be appointed by the Board of Trade, on the application of either party, at the cost of the company making the junction.

Company to acquire only easements in land of other railway company.

X. With respect to any lands belonging to the company or person to whom the other railway belongs, which the company are by the special act authorised to use, enter upon, or interfere with, for the purposes of the junction, the company shall not, except by agreement, or unless otherwise provided in the special act, purchase and take the same, but the company may purchase and take, and such other railway company or person may and shall sell and grant accordingly, an easement (a) or right of using the same for the purposes of the junction.

(a) See *Manchester, Sheffield, & Lincoln. Rail. Co. v. Great Northern Railway Co.*, 9 Hare, 284; *Great Northern Railway Co. v. East & West India Docks & Railway Co.*, 7 R. C. 356; and *ante*, p. 334.

Not to take lands or interfere with works of other company further than necessary.

XI. Nothing relative to the junction in this act contained shall be deemed to authorise the company for the purposes of the junction to take or enter upon any lands belonging to the company or person to whom the other railway belongs, or to alter or interfere with any railway, or any of the works thereof, further or otherwise than is necessary for making the junction and intercommunication between the railways, as shown on the deposited plans and sections of the railway to which the special act relates, without the previous consent in writing in every instance of such other railway company or such person.

As to expense of signals, watchmen, &c.

XII. The company or person with whose railway the junction is made may from time to time erect such signals and conveniences incident to the junction, either on their or his own lands, or on the lands of the company making the junction, and may from time to time appoint and remove such watchmen, switchmen, or other persons as may be necessary for the prevention of danger to, or interference with, the traffic at and near the junction. The working and management of such signals and conveniences, wherever situate, shall be under the exclusive regulation

of the company or person with whose railway the junction is made; and all the expenses of erecting and maintaining those signals and conveniences, and of employing those watchmen, switchmen, and other persons, and all incidental current expenses, shall, at the end of every half year, be repaid by the company making the junction, and in default thereof may be recovered from them in any court of competent jurisdiction.

26 & 27 VICT.
C. 92.

Protection of Navigation.

XIII. Where the company is authorised by the special act to construct, alter, or extend any work on, in, over, through, or across, tidal lands or a tidal water, the company shall, on or near the work, during the whole time of the constructing, altering, or extending thereof, exhibit and keep burning at their own expense, every night from sunset to sunrise, such lights (if any) as the Board of Trade from time to time requires or approves; and (notwithstanding the enactments for the time being in force respecting lighthouses) shall also, on or near the work, when completed, always maintain, exhibit, and keep burning, at their own expense, every night from sunset to sunrise, such lights (if any) for the guidance of ships as the Board of Trade from time to time requires or approves.

If the company fails to comply in any respect with the provisions of the present section, they shall, for each night in which they so fail, be liable to a penalty not exceeding twenty pounds.

XIV. Where the company is authorised or required by the special act to construct a bridge over a navigable tidal water, and the special act does not make express provision respecting the span or spans thereof, then the company shall construct the same with a span or spans of such headway and waterway, and with such opening span or spans, (if any,) and according to such plan, as the Board of Trade directs and approves (a).

Construction of
bridges.

(a) *Ante*, p. 334.

XV. Where the company constructs a bridge with an opening span, it shall not be lawful for the company to detain any vessel, barge, or boat at the bridge for a longer

User of bridges.

26 & 27 Vict.
c. 92.

time than may be necessary for admitting a carriage or engine traversing the railway and approaching the bridge to cross the bridge, and for opening the bridge to admit the vessel, barge, or boat to pass; and the company shall be subject to and shall abide by such regulations with regard to the user of the bridge as may from time to time be made by the Board of Trade.

If the company detains a vessel, barge, or boat longer than the time aforesaid, or fails in any respect to abide by any such regulation as aforesaid, they shall for every such offence be liable to a penalty not exceeding twenty pounds, without prejudice to any remedy against them for any loss or damage sustained by any person.

Access to the
shore under or
across the rail-
way.

XVI. Where the railway cuts off access between the land and a tidal water or tidal lands, then and in every such case the company shall, during the construction of the railway, and from time to time thereafter, make, and shall permanently maintain, and allow to be used by all persons, at all times, free of toll or other charge, all such footways and carriageways over, under, or across the railway, or on a level therewith, as the Board of Trade from time to time directs or approves: Provided always, as follows:

1. The company shall not be obliged to make a footway or carriageway over lands for the use of an owner or occupier who has agreed to receive and has been paid compensation for the severance thereof from the tidal water or tidal lands:
2. The company shall not be obliged to make or to allow to be made a footway or carriageway in such manner as would interfere with the working or using of the railway:
3. The expense of the making and maintenance of a footway or carriageway required to be made after the construction of the railway shall be defrayed by the persons or body interested in the tidal water or tidal lands for whose benefit or convenience the same is required.

Where the footway or carriageway is made across the railway on the level, then the manner of the making and watching of the level crossing shall be subject to the approval of the Board of Trade; and where the level

crossing is made after the construction of the railway, then all expenses attending the watching thereof shall be defrayed by the persons or body interested in the tidal water or tidal lands for whose benefit or convenience the same is required.

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XVII. Where the company is authorised by the special act to construct a railway skirting a public navigable tidal river or channel, the company shall not make any deviation of the railway from the continuous centre line thereof marked on the plan deposited by them at the Board of Trade, even within the limits of deviation shown on that plan, in such manner as to diminish the navigable space, without the previous consent of the Board of Trade or otherwise than in such manner as is expressly authorised by the Board of Trade.

Prohibition of
deviation of cer-
tain works with-
out consent of
Board of Trade.

If any deviation is made in contravention of the present section, the Board of Trade may abate and remove the work in the construction whereof the deviation is made, or any part thereof, and restore the site thereof to its former condition at the expense of the company; and the amount of such expense shall be a debt due from the company to the crown, and be recoverable accordingly with costs, or the same may be recovered, with costs, as a penalty is recoverable from the company.

XVIII. If a work constructed by the company on, in, over, through, or across tidal lands or a tidal water is abandoned, or suffered to fall into decay, the Board of Trade may abate and remove the work, or any part of it, and restore the site thereof to its former condition at the expense of the company; and the amount of such expense shall be a debt due from the company to the crown, and be recoverable accordingly, with costs, or the same may be recovered with costs, as a penalty is recoverable from the company.

Abatement of
work abandoned
or decayed.

XIX. If at any time the Board of Trade deems it expedient, for the purposes of the special act or of this part of this act, to order a survey and examination of a work constructed by the company on, in, over, through, or across tidal lands or tidal water, or of the intended site of any such work, the company shall defray the expense of

Survey of works
by Board of
Trade.

26 & 27 Vict. : the survey and examination ; and the amount thereof shall
 a. 92. be a debt due from the company to the crown, and be recoverable accordingly, with costs, or the same be recovered with costs, as a penalty is recoverable from the company.

PART II.

EXTENSION OF TIME (a).

Parties ag-
 grieved by ex-
 tension of time
 may have com-
 pensation for
 additional
 damage.

XX. Where a railway is authorised to be constructed by a special act passed either before or after the passing of this act, and the time limited by the special act for the exercise of powers of compulsory purchase of lands or of powers for construction of the railway and works, is extended by a special act hereafter passed and incorporating this part of this act,—then and in every such case the justices, arbitrators, umpires, or juries, as the case may be, who award or assess the compensation to be made by the company to the owners or occupiers of, or other persons interested in, lands taken or used for the purposes of the railway and works, or injuriously affected by the construction thereof, shall, in estimating the amount of such compensation, have regard to, and assess compensation for, the additional damage (if any) sustained by those owners, occupiers, or other persons, by reason of the extension of time.

(a) See also 11 & 12 Vict. c. 3 ; 31 Vict. c. 18, (*post*, Appendix.)

Existing con-
 tracts and notices
 to take lands not
 to be affected.

XXI. The extension of time shall not affect any contract entered into or notice given by the company before the passing of the special act granting the extension, for purchasing, taking, or using any lands which the company was entitled to purchase, take, or use ; but every such contract and notice shall be construed and take effect, and the same proceedings may be had thereunder, and all parties thereto shall be entitled to the same rights and remedies in respect thereof, at law and in equity, as if the extension had not been granted.

PART III.*

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WORKING AGREEMENT (a).

XXII. Where two or more companies are authorised by a special act hereafter passed and incorporating this part of this act, to agree among themselves with respect to all or any of the following purposes ; namely,—

Restrictions on agreements between companies.

The maintenance and management of the railways of the companies respectively, or any one or more of them, or any part thereof respectively, and of the works connected therewith respectively, or any of them ;

The use and working of the railways or railway, or any part thereof, and the conveyance of traffic thereon ;

The fixing, collecting, and apportionment of the tolls, rates, charges, receipts, and revenues levied, taken, or arising in respect of traffic ;—

then and in every such case the authority so to agree, or the agreement when entered into, shall not in any manner affect any of the tolls, rates, or charges which the companies, parties thereto, are from time to time respectively authorised to demand and receive from any person or from any other company ; but all such persons and companies shall, notwithstanding the agreement, be entitled to the use and benefit of the railways of the several companies, parties to the agreement, on the same terms and conditions, and on payment of the same tolls, rates, and charges, as they would be if such authority had not been given or the agreement had not been entered into.

(a) See the notes to s. 87 of the Railways Clauses Act, 1845, *ante*, pp. 396–400.

XXIII. The agreement shall not, save so far as its terms and conditions are authorised by “The Railways Clauses Consolidation Act, 1845,” or by “The Railways Clauses Consolidation (Scotland) Act, 1845,” as the case may require, or by any other general statute or law from

Sanction of shareholders to agreements.

* This part is to be incorporated with the certificate of the Board of Trade, under the Railway Companies Powers Act, 1864, where a company are desirous that authority should be given to themselves and some other company, to enter into agreement as to the maintenance and management of the railway ; the working of it ; the fixing, collecting, and apportionment of tolls ; and the ownership and use of stations, &c. See s. 20 of 27 & 28 Vict. c. 120 in the Appendix.

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time to time in force with respect to the companies, parties to the agreement, have any operation unless and until it is sanctioned by such proportion of the votes of the shareholders and stockholders entitled to vote in that behalf at meetings of the several companies, parties thereto, present (personally or by proxy) at a general meeting of each company specially convened for the purpose, (in manner hereinafter mentioned,) as is prescribed in the special act, and if no proportion is prescribed, then by three-fifths of such votes.

Every such meeting shall be convened by circular addressed to each such shareholder and stockholder, and served in the manner prescribed by The Companies Clauses Consolidation Act, 1845, or The Companies Clauses Consolidation (Scotland) Act, 1845, as the case may require, with respect to notices requiring to be served by the company upon the shareholders (a), and also by advertisement inserted once at least in each of two consecutive weeks in some newspaper published or circulating in the county prescribed in the special act, and if no county is prescribed, then in the county in which the head office of the company is situate, the last of such advertisements to be published not less than seven days before the meeting.

(a) *Ante*, p. 64.

Public notice of
intention to
enter into such
agreement.

XXIV. Before the companies enter into the agreement notice of their intention to do so shall be given by them or one of them, in a form to be approved by the Board of Trade, inserted once at least in each of three successive weeks in some newspaper published or circulating in the county prescribed in the special act, and if no county is prescribed, then in the county or one of the counties in which each railway to the maintenance, management, use, or working whereof the proposed agreement relates, or some portion of that railway, is situate; and the notice shall set forth within what time and in what manner any company or person aggrieved by the proposed agreement, and desiring to object thereto, may bring the objection before the Board of Trade.

Approval of
Board of Trade.

XXV. The agreement shall not have any operation until it is approved by the Board of Trade; and the Board

of Trade shall not approve the agreement without being satisfied of its having received such sanction of meetings of the respective companies as aforesaid.

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XXVI. The companies, parties to the agreement, may, in accordance therewith and for the purposes thereof, appoint a joint-committee, composed of such number of the directors of each company as the companies think proper, and from time to time may vary and renew the joint-committee as occasion requires, and may regulate the proceedings of the joint-committee, and may delegate to the joint-committee all such of the powers of the companies as the companies think necessary for carrying into effect the purposes of the agreement; and the joint-committee shall have and may exercise the powers so from time to time delegated to them in like manner as the same powers might be had and exercised by the companies respectively or their respective directors.

Joint-committee
for purposes of
agreements.

XXVII. At the expiration of the first or any subsequent period of ten years after the making of the agreement, the Board of Trade may, if they are of opinion that the interests of the public are prejudicially affected thereby, cause the same to be revised; and the Board of Trade may require the companies, parties thereto, to publish such notices of any intended revision of the agreement as the Board of Trade may direct; and the Board of Trade may modify the agreement in such manner as may seem expedient for the protection of the interests of the public, and may declare the modification to be part of the agreement, and the same shall be read and take effect accordingly.

Agreements between companies
may be modified
by Board of
Trade.

XXVIII. Where a company is authorised by a special act hereafter passed, and incorporating this part of this act, to agree with a person being the proprietor of a railway with respect to all or any of the purposes specified in this part of this act, then and in every such case the provisions of this part of this act shall apply, *mutatis mutandis*, to the company in relation to such authority and to the agreement entered into by virtue thereof.

Working agreements between a
company and an
individual.

XXIX. For the purposes of this part of this act, any alteration of an agreement by the parties thereto shall be deemed an agreement.

Alteration of
agreement.

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PART IV.

STEAM VESSELS.

Provision for
securing equality
of treatment.

XXX. Where a railway company incorporated either before or after the passing of this act is authorised by a special act hereafter passed and incorporating this part of this act, to build, or buy, or hire, and to use, maintain, and work, or to enter into arrangements for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports, and to take tolls in respect of such steam vessels,—then and in every such case tolls shall be at all times charged to all persons equally, and after the same rate in respect of passengers conveyed in a like vessel passing between the same places under like circumstances; and no reduction or advance in the tolls shall be made in favour of or against any person using the steam vessels in consequence of his having travelled or being about to travel on the whole or any part of the company's railway, or not having travelled or not being about to travel on any part thereof; or in favour of or against any person using the railway in consequence of his having used or being about to use, or his not having used or not being about to use, the steam vessels; and where an aggregate sum is charged by the company for conveyance of a passenger by a steam vessel and on the railway, the ticket shall have the amount of toll charged for conveyance by the steam vessel distinguished from the amount charged for conveyance on the railway.

Application of
Railway and
Canal Traffic
Act.

XXXI. The provisions of the Railway and Canal Traffic Act, 1854, (a), so far as the same are applicable, shall extend to the steam vessels, and to the traffic carried on thereby.

(a) See this act in the Appendix, p. cix.

Company em-
powered to make
bye-laws for re-
gulating steam
vessels.

XXXII. The company may from time to time make bye-laws in relation to passengers, animals, and goods conveyed in or upon the steam vessels, and as to the embarkation and disembarkation thereof respectively, and may enforce the observance of the same by penalties, in the same manner as they may with respect to passengers,

animals, and goods conveyed upon their railway; such bye-laws to be sanctioned and authenticated in the same manner as is required by any special or other act with respect to byelaws relating to the company's railway, and been published by being painted on boards, or printed on paper and pasted on boards, and hung up or affixed and continued on some conspicuous part of every steam vessel and landing-place of the company; and such bye-laws, and all penalties in respect of the breach thereof, shall be enforced and recovered in the same manner as is provided with respect to bye-laws relating to the company's railway, and to penalties in respect of the breach thereof.

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XXXIII. All tolls and charges for the steam vessels due and payable to the company on any account whatsoever, and all costs, damages, and expenses by the special act directed to be paid in respect of the steam vessels, may be levied by distress; and in *England* or *Ireland* any justice, and in *Scotland* the sheriff, may, on application by or on behalf of the company, issue his warrant accordingly.

Recovery of
money by
distress.

The justice or sheriff who issues the warrant of distress may order that the costs of the proceedings for the recovery of the toll or sum shall be paid by the person liable to pay the toll or sum, and the costs shall be ascertained by the justice or sheriff, and shall be included in the warrant of distress for the recovery of the toll or sum.

XXXIV. Any number of names and sums may be included in any warrant of distress or notice obtained or given by the company for any of the purposes of this part of this act, or of the provisions of the special act with respect to the steam vessels, and may be stated either in the body of the warrant or notice, or in a schedule thereto.

Several names
in one warrant.

XXXV. In every seventh year after the passing of the special act, reckoned from the first day of January next after its passing, the Board of Trade, if they are of opinion that the interests of the public are prejudicially affected by the exercise of the powers of the company relative to steam vessels, may give to the company notice in writing thereof, and of the reasons on which that opinion is founded, and if the company does not before the beginning of the then

Provision for
cesser of powers
as to steam ves-
sels, on report
from Board of
Trade.

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next session of Parliament make provision to the satisfaction of the Board of Trade for protection of the interests of the public, or if the injury done to the interests of the public is in the opinion of the Board of Trade incapable of being remedied by the company, then the Board of Trade, at the beginning of the session of Parliament then next following, shall report to both Houses of Parliament such their opinion, and the reasons on which that opinion is founded, and at the expiration of twelve calendar months after the presentation to the Houses of Parliament of that report, the powers of the company relative to steam vessels, or such of them as are specified in the report, shall, unless Parliament in the meantime otherwise provides, cease to be exercised.

PART V.

AMALGAMATION.

Application of
Part V.

XXXVI. This part of this act shall apply where two or more railway companies, respectively incorporated either before or after the passing of this act, are amalgamated by a special act hereafter passed and incorporating this part of this act.

Definition of
cases of amalga-
mation.

XXXVII. For the purposes of this part of this act, companies shall be deemed amalgamated by a special act, in either of the following cases:

1. Where by the special act two or more companies are dissolved, and the members thereof respectively are united into and incorporated as a new company:
2. Where by the special act a company or companies is or are dissolved, and the undertaking or undertakings of the dissolved company or companies is or are transferred to another existing company, with or without a change in the name of that company:

And in this part of this act, such special act is referred to as the amalgamating act; the company incorporated or continued by or under the amalgamating act is referred to as the amalgamated company; and the time prescribed in

the amalgamating act for the amalgamation taking effect, and if no time is prescribed, then the time of the passing of the amalgamating act is referred to as the time of amalgamation.

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XXXVIII. In every case of amalgamation, the undertaking,* railways, harbours, navigations, ferries, wharfs, canals, works, real and personal property, powers, authorities, privileges, exemptions, rights of action and suit, and all other the rights and interests of the dissolved company, shall, subject to the contracts, obligations, debts, and liabilities of that company, become at the time of amalgamation, and by virtue of the amalgamating act, vested in the amalgamated company, and may and shall be held, used, exercised, and enjoyed by the amalgamated company in the same manner and to the same extent as the same respectively at the time of amalgamation are, or, if the amalgamating act were not passed, might be, held, used, exercised, and enjoyed by the dissolved company (a).

Undertakings of dissolved companies vested in amalgamated company.

(a) As to the effect of agreements for amalgamation upon previous working agreements between one of the amalgamating companies and a third company, see *London, Chatham, and Dover Railway Co. v. South-Eastern Railway Co.*, 2 W. N. 249.

XXXIX. The special acts relating to or affecting the dissolved company or their undertaking in force at the passing of the amalgamating act, shall, except so far as they are thereby expressed to be varied or repealed, remain in full force; and all rights and powers thereby conferred on and vested in the dissolved company in relation to their undertaking may be enjoyed and exercised by the amalgamated company in relation to the dissolved undertaking; and all matters to be done, continued, or completed, or which, but for the amalgamation, would, might, or could be done, continued, or completed, by the dissolved company, or their directors, officers, or servants, under or by virtue of those acts, shall or may be done, continued, or completed by the amalgamated company, and their directors, officers, and servants, as the case may be; and every

Acts relating to dissolved companies to apply to amalgamated company.

* By the 160th Standing Order (Commons) it is directed that in bills for the amalgamation of railway companies, the amount of capital created by such amalgamation shall in no case exceed the sum of the capitals of the companies so amalgamated. See this order in the Appendix.

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special act, so far as it relates to or affects the dissolved company or their undertaking, shall be read and construed as if the name of the amalgamated company had been used therein in relation to that undertaking instead of the name of the dissolved company.

Saving debts and
claims of dis-
solved com-
panies.

XL. Except as may be otherwise provided in the special act, all debts and money due from or to the dissolved company, or any persons on their behalf, shall be payable and paid by or to the amalgamated company; and all tolls, rates, duties, and money due or payable by virtue of any act relating to the dissolved company from or to that company shall be due and payable from or to the amalgamated company, and shall be recoverable from or by the amalgamated company by the same ways and means, and subject to the same conditions, as the same would or might have been recoverable from or by the dissolved company if the amalgamating act had not been passed.

Saving convey-
ances, contracts,
&c.

XLI. All deeds, conveyances, grants, assignments, leases, purchases, sales, mortgages, bonds, covenants, agreements, contracts, and securities which, before the amalgamation have been executed, made, or entered into by, with, to, or in relation to the dissolved company, or the directors thereof, and which are in force at the time of amalgamation, and all obligations and liabilities which before the amalgamation have been incurred by or to, or which, but for the amalgamation, might or would have arisen in relation to, the dissolved company or the directors thereof, shall be as valid and of as full force and effect in favour of, against, or in relation to the amalgamated company as if the same had been executed, made, or entered into by, with, or to, or in relation to, or had been incurred by or to, or had arisen in relation to the amalgamated company by name.

Causes and
rights of action
reserved.

XLII. All causes and rights of action or suit accrued before the time of amalgamation, and then in any manner enforceable by, for, or against the dissolved company, shall be and remain as good, valid, and effectual for or against the amalgamated company as they would or might have been for or against the dissolved company affected thereby, if the amalgamating act had not been passed.

XLIII. Nothing in the amalgamating act or in this part of this act shall cause the abatement, discontinuance, or determination of or in anywise prejudicially affect any action, suit, or other proceeding at law or in equity (a) commenced by or against the dissolved company, either solely or jointly with any other company or with any person, before the time of amalgamation, and then pending; but the same may be continued, prosecuted, or enforced by or against the amalgamated company, either solely or, as the case may require, jointly with such other company or with such person; and all persons committing offences against any of the provisions of any special act relating to the dissolved company before the amalgamation may be prosecuted, and all penalties incurred by reason of such offences may be sued for and recovered, in like manner in all respects as if the amalgamating act had not been passed, —the amalgamated company being in respect of all such matters considered as identical with the dissolved company.

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Actions not to
abate.

(a) Vice-Chancellor Stuart, in a case for specific performance of an agreement for the purchase of land, against a company which had since the filing of the bill become amalgamated with another company, refused to make any order in the suit, but gave leave to amend: (*Powys Shrewsbury & Potteries Railway Co.*, 2 W. N. 30.) Upon a motion, however, to dismiss a bill by a railway company for want of prosecution, it appearing that the railway company had amalgamated with another company, it was held that this section applied, and that the suit had not abated: (*West Hartlepool Harbour & Railway Co. v. Jackson*, 36 L. J. (Ch.) 189; 15 W. R. 122; 15 L. T. N. S. 274; 1 W. N. 364.)

Saving submissions and awards relating to dissolved companies.

XLIV. No submission to arbitration of any matter in dispute between the dissolved company and any other company or any person, under which any reference is pending and incomplete at the time of amalgamation, and no award theretofore made and then remaining in force, shall be revoked or prejudicially affected by anything in the amalgamating act or in this part of this act contained; but every such submission and award shall be as valid and effectual for or against the amalgamated company as it would have been for or against the dissolved company.

XLV. All works which the dissolved company is at the time of amalgamation authorised or bound to execute and

Unexecuted works of dis-

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solved com-
panies may be
completed.

complete, and which are not then executed or completed, may or shall (as the case may require) be executed or completed by the amalgamated company, and for that purpose the amalgamated company shall have and be subject to all the powers, rights, and conditions which were conferred or imposed upon the dissolved company, and which but for the passing of the amalgamating act might have been exercised by or enforced against the dissolved company.

Contracts for
land entered into
by dissolved
companies to be
executed.

XLVI. Where the dissolved company has under any special act entered into any contract for the purchase of or taken or used any lands, which at the time of amalgamation have not been effectually conveyed to the dissolved company, or the purchase-money in respect of which has not been duly paid by the dissolved company,—then and in every such case the contract, if in force at the time of amalgamation, shall thereafter be completed by, and such lands shall be conveyed to, the amalgamated company, or as the amalgamated company directs, and the purchase-money shall be paid and applied pursuant to the special acts relating to the dissolved company; and those acts shall, in relation to the completion of the contract and the purchase and conveyance of the lands, and the payment and application of the purchase-money in respect thereof, be read and construed as if the amalgamated company were the company named in the acts and contract.

Application of
money paid into
bank or to trust-
tees.

XLVII. Where any money has, before the time of amalgamation, been paid by the dissolved company, or is thereafter paid by the amalgamated company under any special act relating to the dissolved company, into the Bank of *England*, or into one of the incorporated or chartered banks in *Scotland*, or into the Bank of *Ireland*, or to any trustee or trustees, on account of the purchase of any lands, or any interest therein, or for any compensation or satisfaction, or on any other account, such money, or the stocks, funds, or securities in or upon which the same then is or thereafter may be invested by order of any court, or otherwise, and the interest, dividends, and annual produce thereof, shall be applied and disposed of pursuant to such special act; and that and every other act shall, in relation to such money, stocks, funds, or securities, or the interest, dividends, or annual produce thereof, be read and construed

as if the amalgamated company were the company therein named with reference to the same money, stocks, funds, securities, interest, dividends, or annual produce.

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XLVIII. All officers and persons who, at the time of amalgamation, have in their possession or under their control any books, documents, papers, or effects belonging to the dissolved company, or to which the dissolved company would but for such dissolution have been entitled, shall be liable to account for and deliver up the same to the amalgamated company, or to such persons as the amalgamated company may appoint to receive the same, in the same manner, and subject to the same consequences on refusal or neglect, as if such officers and persons had been appointed by and become possessed of such books, documents, papers, or effects for the amalgamated company.

Officers of dissolved companies to be accountable for books, &c.

XLIX. All clerks, officers, and servants who at the time of amalgamation are in the employment of the dissolved company shall thereupon become clerks, officers, or servants, as the case may be, of the amalgamated company, with the same rights, and subject to the same obligations and incidents in respect of such employment, as they would have had or been subject to as the clerks, officers, or servants of the dissolved company, and shall so continue unless and until they respectively are duly removed from such employment by the amalgamated company, or until the terms of their employment are duly altered by the amalgamated company.

Officers of dissolved companies to be officers of amalgamated company.

L. All books and documents which would have been evidence in respect of any matter for or against the dissolved company shall be admitted as evidence in respect of the same or the like matter for or against the amalgamated company.

Books, &c., to be evidence.

LI. All resolutions of any general meeting or board of directors of the dissolved company, or of any duly constituted and authorised committee thereof, so far as the same are applicable and remain in force, shall, notwithstanding the dissolution, continue to be operative, and shall apply to the amalgamated company, and to the directors, officers, and servants of the amalgamated company, until duly re-

Resolutions of dissolved companies to remain in force.

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voked or altered by the amalgamated company or under their authority.

Payment of
calls.

LII. All calls made by the dissolved company, and not paid at the time of amalgamation, shall be payable to and may be enforced by the amalgamated company, as if such calls had been made by the amalgamated company.

Registers, books,
and certificates
relating to dis-
solved com-
panies to sub-
sist until re-
placed.

LIII. All registers of shares, stock, mortgages, and bonds of the dissolved company, and all registers of transfers thereof respectively, and all shareholders' and stockholders' address books, and all certificates of shares or stock of and in the dissolved company, which are valid and subsisting at the time of amalgamation, shall continue to be valid and subsisting, and shall have the same operation and effect as before the dissolution, unless and until new or altered registers, books, and certificates respectively are substituted in their stead; and all transfers, sales, or dispositions of stock or shares made before the dissolution and not then completed, shall have the same operation and effect as if made after the dissolution.

Bye-laws to re-
main in force,

LIV. All the bye-laws, rules, and regulations of the dissolved company relating to the management, use, or control of their undertaking shall, notwithstanding the dissolution, continue to be in force, and applicable to and in respect of the undertaking, and shall and may be enforced by and available to the amalgamated company in their own name as well for the recovery of penalties as for all other purposes, as if the same respectively had been originally made by the amalgamated company, until the expiration of twelve months after the time of amalgamation, or until other bye-laws, rules, and regulations are duly made by the amalgamated company in their stead, whichever first happens.

General saving
of rights and
claims.

LV. Notwithstanding the dissolution of the dissolved company, and the amalgamation, everything before the time of amalgamation done, suffered, and confirmed respectively, under or by virtue of any special act relating to the dissolved company, shall be as valid as if the amalgamating act had not been passed; and the dissolution and amalgamation, and the amalgamating act, and this part of this

act, respectively, shall accordingly be subject and without prejudice to everything so done, suffered, and confirmed respectively, and to all rights, liabilities, claims, and demands, present or future, which if the dissolution and amalgamation had not taken place, and the amalgamating act had not been passed, would be incident to or consequent on anything so done, suffered, and confirmed respectively; and with respect to all things so done, suffered, and confirmed respectively, and to all such rights, liabilities, claims, and demands, the amalgamated company shall to all intents represent the dissolved company; and the generality of this present provision shall not be deemed to be restricted by any other of the provisions of this part of this act, or by any provision of the amalgamating act that does not expressly refer to this present provision, and expressly restrict the operation thereof.

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THE RAILWAY COMPANIES ACT, 1867.

(30 & 31 VICT. c. 127.)

An Act to amend the law relating to Railway Companies.—[20th August 1867.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

- Short title. I. This Act may be cited as "The Railway Companies Act, 1867."
- Extent of act. II. Except as in this act expressly otherwise provided, this act shall not extend to *Scotland* (a).
- Scotch act of 1867. (a) See the Railway Companies (Scotland) Act, 1867, (31 & 32 Vict. c. 126,) the material differences between which and the English Act are mentioned in the notes to the corresponding sections of the English Act.
- Where part of line is in Scotland. With respect to schemes of arrangement in the case of companies having their principal offices in *England*, but part of whose line is situate in *Scotland*, see s. 21, *post*, p. 496.
- Interpretation of terms. III. In this act—
The term "company" (a) means a railway company ; that is to say, a company constituted by act of Parliament, or by certificate under act of Parliament, for the purpose of constructing, maintaining, or working a railway, (either alone or in conjunction with any other purpose :)
The term "action" (b) includes suit or other proceeding :
The term "judgment" includes decree (c), order, or rule :
The term "share" includes stock :
The term "person" includes corporation :

The term "Court of Chancery" or "Court" means the Court of Chancery in *England* or *Ireland*, as the case requires: 30 & 31 Vict.
c. 127.

The term "Gazette" means, with respect to *England*, the *London Gazette*, and with respect to *Ireland*, the *Dublin Gazette*.

(a) The term "company" in the Companies Clauses Consolidation Act, 1845, means simply the company constituted by the special act. See *ante*, pp. 3 and 316.

(b) As to what proceedings are within the meaning of this act, "Action," see the notes to ss. 4, 5, and 7, *post*.

(c) The word "decree," as used in the Railway Companies (Scotland) Act, 1867, (30 & 31 Vict. c. 126,) includes decree of Court, (whether in absence or *in foro contradictorio*), and decree of registration, (whether on deeds containing a clause of registration, or on registered protests of promissory notes or bills of exchange.) "Decree," in
Scotch Act.

PROTECTION OF ROLLING-STOCK AND PLANT.

IV. The engines, tenders, carriages, trucks, machinery, tools, fittings, materials, and effects, constituting the rolling-stock and plant used or provided by a company for the purposes of the traffic on their railway, or of their stations or workshops, shall not, after their railway or any part thereof is open for public traffic, be liable to be taken in execution* at law or in equity at any time after the passing of this act, and before the first day of September 1868 (a), where the judgment on which execution issues is recovered in an action on a contract entered into after the passing of this act, or in an action not on a contract commenced after the passing of this act†; but the person who has recovered any such judgment may obtain the appointment of a receiver (b), and, if necessary, of a manager of the undertaking of the company, on application by petition (c), in a summary way, to the Court of Chancery in *England* or in *Ireland*, according to the situation of the railway of the company; and all money received by such receiver or manager shall, after due provision for the working expenses of the railway and other proper outgoings in respect of the undertaking, be applied and distributed Restriction on
execution*
against personal
property of com-
pany.

* Or diligence against movable property of a Scotch company, under Railway Companies (Scotland) Act, 1867, s. 4.

† Or on a protested promissory note or bill of Exchange, or a deed containing a clause of registration registered after the passing of the Scotch Act, (s. 4.)

30 & 31 Vict.
c. 127.

under the direction of the Court in payment of the debts of the company and otherwise according to the rights and priorities of the persons for the time being interested therein; and on payment of the amount due to every such judgment-creditor as aforesaid, the Court may, if it think fit, discharge such receiver, or such receiver and manager.

Extension of protection until 1st September 1870.

(a) By the Railway Companies Act, 1868, (31 & 32 Vict. c. 79,) it is enacted that s. 4 of the Railway Companies Act, 1867, and the Railway Companies (Scotland) Act, 1867, shall be read and have effect as if the 1st day of September 1870 were therein mentioned, instead of the 1st day of September 1868.

Receivers.

(b) With respect to the office and duties of receivers, see *ante*, p. 53, *et seq.*

Manager.

(c) Independently of the power under this act to appoint a manager, the Court of Chancery has no jurisdiction to give to any person powers of management, which can only be exercised by the company under their act of Parliament. See the cases cited on this subject, *ante*, p. 54.

Form of order on petition under this section.

Under this section Sir G. M. Giffard, V.-C., made an order on petition directing the appointment of the secretary of the company manager of the undertaking, and receiver of the tolls, rents, calls, and arrears of calls, and all other moneys due or to become due to or receivable by the company, from or in respect of the railway and undertaking;

An affidavit proving the written contract on which the petition was founded to be produced to the registrar;

Usual directions to invest balances and accumulate dividends;

Inquiry as to what was due to the petitioners for principal, interest, and costs upon their judgment debt;

Inquiry whether there were any other, and what, debts of the company, and whether the same, or any, and which of them, were incumbrances on the said undertaking or the tolls arising therefrom, or any or what parts thereof respectively;

And how the said incumbrances respectively were created, and what were the rights and priorities of the persons for the time being interested therein.

Adjourn further consideration. Liberty to petitioners and all other persons interested to apply: (*In re Stafford & Uttoxeter Railway Co., ex parte Harrison*, 3 W. N. 113.)

(d) As to petitions and orders under this section see Part II. of the General Order of the 24th of January, 1868, *post*, p. 511.

Determination of questions respecting executions.

V. If in any case where property of a company has been taken in execution a question arises whether or not it is liable to be so taken notwithstanding this act (a), the same may be heard and determined on an application by either party by summons (b) in a summary way to the court out of which the execution issued, or if the court is one of the superior courts of law, then to a judge of any

one of those courts, and such determination shall be final and binding. 30 & 31 Vict.
c. 127.

(a) See the cases in the notes to s. 7, (*post*), with respect to the jurisdiction of the Court to cause execution to issue, notwithstanding the provisions for the protection of companies from execution. Execution notwithstanding act.

(b) See Part II. s. 32, of the General Order of 24th January, 1868, as to summonses under this section, *post*, p. Summons under this section.

ARRANGEMENTS.

VI. Where a company are unable to meet their engagements with their creditors, the directors may prepare (a) a scheme of arrangement between the company and their creditors, (with or without provisions for settling and defining any rights of shareholders of the company as among themselves, and for raising, if necessary, additional share and loan capital, or either of them,) and may file the same in the Court of Chancery in *England* or in *Ireland*, according to the situation of the principal office of the company, with a declaration in writing under the common seal of the company, to the effect that the company are unable to meet their engagements with their creditors, and with an affidavit of the truth of such declaration made by the chairman of the board of directors and by the other directors, or the major part in number of them, to the best of their respective judgment and belief. Preparation and filing of scheme of arrangement.

(a) As to the preparation and filing of the scheme, copies of the scheme, notice of filing, certificate of filing, &c., &c., see Part I. of the General Order under this act, dated 24th January 1866, *post*, p. 505. General order as to schemes.

Vice-Chancellor Sir W. P. Wood, in giving judgment in *Re Cambrian Railways Co.'s Scheme*, (L. R. 3 Ch. 278, p. 282, n.) observes that s. 6 includes both inside and outside creditors, but gives no power to the company by their scheme to deal with priorities or rights of creditors, which must be taken as they are, whatever their legal rights may be. Binding nature of scheme.

VII. After the filing of the scheme, the Court may, on the application of the company on summons or motion in a summary way, restrain any action against the company on such terms as the Court thinks fit (a). Stay of actions.

(a) A motion was made under this section to restrain proceedings by landowners against the company, after the filing of a scheme under the act. The scheme provided that certain mortgages should not be paid off until the 1st of January 1873; that the company should be at liberty to raise money on mortgage; that they should Proceedings by unpaid vendors.

30 & 31 Vict.
c. 127.

Jurisdiction to
restrain proceed-
ings by outside
creditors and
landowners.

complete all contracts with landowners, and settle all other debts, by granting rentcharges, mortgages, or debenture stock; that all actions, &c., should be stayed; and that no actions or suits should be instituted against the company, except for the nonperformance of the scheme. A great number of actions and suits, by simple contract creditors, landowners, and debenture-holders were pending, and summonses to stay them were adjourned into court, and heard before Sir W. P. Wood, V.-C., who decided that, having regard to s. 9, it was desirable that in future any actions or suits, by simple contract creditors and debenture-holders, in which there was any question to try, should be proceeded with, but that those in which the company admitted that they had no defence, should be stayed, the company giving judgment, to be dealt with as the court should direct: (*Re Cambrian Railways Co.'s Scheme*, L. R. 3 Ch. 278, 280, *n*.; and see minutes of order, p. 291, *n*.)

Lord Cairns, L. J., observed, when the case came before him on appeal, that the hearing of a motion to stay proceedings was not the proper time for deciding what would be the effect of a scheme under the act, as against outside creditors—that is, general creditors—or against unpaid landowners. The persons against whom it was to have effect were those who belong to a class, the majority of whom had power to assent, and the outside creditors and landowners had not such power. But if, while the scheme was maturing, and the requisite assents were being obtained, the company and its property were being torn asunder and destroyed by litigation and executions, the remedy proposed by the scheme would come too late. An interim power must, therefore, be given to the court to stay actions on proper terms, and executions must be made dependent on the leave of the court. His lordship observed further, that “there was every reason why outside creditors of all kinds, including landowners, though not bound by the scheme, should be included in the 7th section. The words are as large as possible; and, as I understand, the Vice-Chancellor was of opinion that, if the 23d section had not been in the act, the court would have had jurisdiction to restrain the proceedings of a landowner under s. 7; it was, as the order states, on the construction of the 23d section that he decided against the jurisdiction.” Lord Cairns then proceeded to show that the words in the 23d section, “nor shall anything *hereinbefore contained* affect any claim for land taken, &c.,” apply only to the 23d section itself, and not to all the preceding clauses of the act; that in a proper case there was jurisdiction to restrain proceedings of the unpaid vendor of land under s. 7; and that an unpaid vendor would be obliged, under s. 9, to obtain leave of the court before issuing process. This jurisdiction would not, however, be exercised unless the scheme made reasonable provisions for the payment of the general creditors and unpaid landowners. His lordship therefore affirmed the decision of the court below, not upon the construction of the 23d section, but for the reasons stated above: (*Ibid.*)

Proceedings by
unpaid vendor.

Upon an application by an unpaid vendor for leave to proceed with his suit for specific performance, Sir R. Malins, V.-C., granted such leave, and the company having been in possession for nine

years, refused to impose any terms: (*Symes v. Cambrian Railway Co.*, 3 W. N. 284.) 30 & 31 Vict. c. 127.

V.-C. Giffard, however, in another case, expressly followed the *Cambrian Railways* case, and upon an application by the company, (who had filed a scheme,) to stay proceedings in a suit by an unpaid vendor, for specific performance, refused to make any order, except on the terms of the company agreeing to an immediate lease to the plaintiff, who was not to enforce payment for three months from the date of the order, liberty to apply being granted: (*Robertson v. Wrexham, Mold, and Connah's Quay Railway Co.*, 17 W. R. 137; and see *Re Bristol and North Somerset Railway Co.*, L. R. 6 Eq. 448; and the notes to s. 18, *post*.) Proceedings by unpaid vendor.

Upon a motion on behalf of a railway company who had filed a scheme of arrangement, and duly advertised it, to restrain execution upon a *scire facias* against two shareholders in respect of unpaid calls, it was held that unpaid capital of a company was property of the company, within this section, whether the calls were made or not, and that the court would, therefore, grant an injunction accordingly: (*In re Devon and Somerset Railway Co.*, L. R. 6 Eq. 610; 17 W. R. 133.) Terms on which actions passed.

By rule 14 of the General Order of the 24th January 1868, under this act, "no order, under s. 7 of the said act, for restraining an action against the company, by reason of a scheme having been filed, shall be made, except on an undertaking by the company to be amenable in such damages (if any) as the court, or the judge in chambers, may think fit to award, in the event of the plaintiff being ultimately held entitled to proceed with such action; and on such further terms (if any) as the court or judge may think reasonable." Proceedings in taxation of costs.

(b) An order for reinvestment and payment of costs by the railway company having been made before the taxation of the costs was completed, a special act, (30 & 31 Vict. c. ccix.,) was passed containing a provision, (s. 4,) that no actions, suits, executions, attachments, or other proceedings against the company should be continued or commenced during the period of ten years, (therein denominated the "suspense period,") unless with the sanction of the court, and on such terms as the court should think fit: Provided that the costs of any actions, &c., against the company, or affecting the property thereof, which should be discontinued in pursuance of this clause, should be in the discretion of the court, &c., if allowed, should be added to the debt. Sir R. Malins, V.-C., held that the court certainly had power to make an order for payment of the costs of reinvestment, notwithstanding the act, considering that such costs were to be treated as part of the original purchase-money of the land. But, on appeal, the Lords Justices reversed this decision, with costs, on the ground that the section above referred to, giving the court power to allow process to issue, was intended as a provision to guard against negligence or malfeasance on the part of the directors, and not as a power to be exercised at the instance of a single shareholder, who was in the same position as other creditors: (*In re London, Chatham, and Dover Railway Co.*, *ex parte Watts's Charity*, 3 W. N. 75, 110.)

492 *The Railway Companies Act, 1867, ss. 8-10.*

30 & 31 Vict.
c. 127.

In a subsequent case, the Master of the Rolls, although expressing some doubt on the subject, refused to restrain an unpaid vendor from pursuing his remedies under an order obtained in a suit for specific performance, the taxation of the costs of the suit not being completed at the time of passing of the special act mentioned above: (*Wootton v. London, Chatham, and Dover Railway Co.*, 3 W. N. 203.)

But in a case at law, it was held that a taxation of costs is a proceeding within the meaning of s. 4 of the same special act, and must be discontinued accordingly: (*Reg. v. London, Chatham, and Dover Railway Co.*, 3 W. N. 39; 16 W. R. 487.)

Notice in
Gazette.

VIII. Notice of the filing of the scheme shall be published in the *Gazette* (a).

Form of notice.

(a) See form of notice in the 3d schedule to the General Order (24th January 1867) under this act, *post*, p. 515.

Stay of executions, &c.

IX. After such publication of notice no execution, attachment, or other process against the property of the company shall be available without leave of the court, to be obtained on summons or motion in a summary way (a).

(a) The question whether execution by general creditors and unpaid landowners may be stayed under s. 7, and the present section is fully considered by the case of *Re Cambrian Railways Co.'s Scheme*, L. R. 3 Ch. 278; the grounds of that decision will be found in the notes to s. 7, *ante*.

Costs of application to stay actions.

It has been held that the court has no jurisdiction to give costs on an application under this section, although it may be of opinion that the application is a proper one: (*Re Devon & Somerset Railway Co.*, 2 R. 6 Eq. 610; 17 W. R. 133.) It was said, however, in a previous case, that the costs will be dealt with in the same manner as in administration suits, where any step taken by a creditor, after notice of a decree, is taken at his peril, and he has to pay the costs of any application to stop it: (*Per Wood, V.-C.*, in *Re Cambrian Railways Co.'s Scheme*, L. R. 3 Ch. 280, n.)

Assent by mortgagees, &c.

X. The scheme shall be deemed (a) to be assented to by the holders of mortgages or bonds issued under the authority of the company's special acts when it is assented to in writing by three-fourths in value of the holders of such mortgages or bonds, and shall be deemed to be assented to by the holders of debenture stock of the company when it is assented to in writing by three-fourths in value of the holders of such stock.

"Shall be deemed to be assented to," &c.

(a) The words "shall be deemed to be assented to" were held by Wood, V.-C., to justify the inference that the assents are actually required: (See *Re Cambrian Railways Co.'s Scheme*, L. R. 3 Ch. 284, n.)

XI. Where any rentcharge or other payment is charged on receipts of or is payable by the company in consideration of the purchase of the undertaking of another company, the scheme shall be deemed to be assented to (a) by the holders of such rentcharge or other payment when it is assented to in writing by three-fourths in value of such holders.

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Assent by holders of rentcharge, &c.

(a) See note to last section.

XII. The scheme shall be deemed to be assented (a) to by the guaranteed or preference shareholders of the company when it is assented to in writing as follows:—If there is only one class of guaranteed or preference shareholders, then by three-fourths in value of that class, and if there are more classes of guaranteed or preference shareholders than one, then by three-fourths of each such class.

Assent by preference shareholders.

(a) See note to s. 10, *ante*.

XIII. The scheme shall be deemed to be assented to (a) by the ordinary shareholders of the company, when it is assented to at an extraordinary general meeting (b) of the company called for that purpose.

Assent by ordinary shareholders.

(a) See note to s. 10, *ante*.

(b) As to extraordinary general meetings, see the Companies Clauses Act, 1845, ss. 68-70, *ante*, pp. 63 and 64.

Extraordinary general meetings.

XIV. Where the company are lessees of a railway, the scheme shall be deemed to be assented to (a) by the leasing company, when it is assented to as follows:

Assent by leasing company.

In writing by three-fourths in value of the holders of mortgages, bonds, and debenture stock of the leasing company:

If there is only one class of guaranteed or preference shareholders of the leasing company, then in writing by three-fourths in value of that class, and if there are more classes of guaranteed or preference shareholders in the leasing company than one, then in writing by three-fourths in value of each such class:

By the ordinary shareholders of the leasing company at an extraordinary general meeting of that company specially called for that purpose.

(a) See note to s. 10, *ante*.

XV. Provided that the assent to the scheme of any class of holders of mortgages, bonds, or debenture stock, or of

Assent of creditors not affected unnecessary.

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any class of holders of a rentcharge, or other payment as aforesaid, or of any class of guaranteed or preference shareholders, or of a leasing company, shall not be requisite in case the scheme does not prejudicially affect any right or interest of such class or company.

Application for
confirmation of
scheme.

XVI. If at any time within three months after the filing of the scheme, or within such extended time as the Court from time to time thinks fit to allow, the directors of the company consider the scheme to be assented to as by this act required, they may apply to the Court by petition in a summary way for confirmation of the scheme (a).

Notice of any such application when intended shall be published in the *Gazette*.

(a) See note to next section.

Confirmation of
scheme.

XVII. After hearing the directors, and any creditors, shareholders, or other parties whom the Court thinks entitled to be heard (a) on the application, the Court, if satisfied that the scheme has, within three months after the filing of it, or such extended time (if any) as the Court has allowed, assented to as required by this act, and that no sufficient objection to the scheme has been established, may confirm the scheme.

Right of creditors
to be heard.

(a) *In Re Bristol & North Somerset Railway Co.*, L. R. 6 Eq. 448, 451, Vice-Chancellor Giffard refused to exclude any creditor who had a substantial interest from being heard, and therefore overruled an objection as to two debenture creditors, although they had not entered an appearance, as directed by the 19th rule of the General Order under this act. (See this order, *post*, p. 509.) And see *per V.-C. Wood*, in *Re Cambrian Railways Co.'s Scheme*, L. R. 3 Ch. 256, where it appears to be his Honour's opinion that simple contract creditors are entitled to be heard.

Simple contract
creditors.

Form of petition.

As to the form of the petition for confirmation of the scheme, see the 15th rule under the General Order, *post*, p. 508.

How company
represented.

By s. 16 of the Order, the petitioner presenting the petition are to be treated as representing the company, and the company are not otherwise to appear on the hearing of such petition, *post*, p. 508.

Hearing.

By rule 17, application to appoint a day for hearing the petition is to be made in Chambers, and each day is not to be before the expiration of three weeks from the date of the application; and provisions for advertising notices of the presentation of the petition are added; by rule 18, the petition is not to come on for hearing for fourteen days after the insertion of the notices; and the notices are to be repeated weekly. See the Order, *post*, p. 508.

Advertisements.

Order.

As to the order for confirmation, notice of such order, see rules 21 and 22 of the General Order, *post*, p. 510, and rule 33 (*post*, p. 512), as to the drawing up of orders.

Confirmation and Enrolment of Proposed Scheme. 495

The Court, under this section, confirmed a scheme enabling a railway company to create and issue debenture stock to an amount in excess of their powers under their acts, and providing for payment of creditors in such stock, and other matters, nine-tenths in value of the creditors appearing and consenting to the scheme: (*Re Teign Valley Railway Co.*, 17 L. T. N. S. 201.)

30 & 31 Vict.
c. 127.

But a scheme, containing a clause providing that all creditors, except unpaid landowners and judgment creditors on elegit, should receive in discharge of their claims fully paid up shares to the amount of their claims, and that they should thereupon give a release for their debts, and give up their securities, was not confirmed on the ground that its effect was to turn creditors into shareholders, and to extinguish their debts, and as it could not, in accordance with the decision of Lord Cairns, L. J. in the *Cambrian Railways Scheme*, (*ubi supra*), bind all the creditors of the company: (*In re Bristol & North Somerset Railway Co.*, L. R. 6 Eq. 448.) See also the notes to s. 7, *ante*.

Scheme not confirmed.

It would seem that the Court has jurisdiction, after notice of the filing of and the assent of creditors to a scheme, which the Court does not consider a proper one, to allow a new scheme to be filed without exceeding the period of three months allowed before confirmation of the original scheme: (*Per V.-C. Wood*, in *Re Cambrian Railways Co.'s Scheme*, L. R. 3 Ch. 289, *n*.)

Filing of new scheme.

XVIII. The scheme when confirmed shall be enrolled in the Court, and thenceforth the same shall be binding and effectual to all intents, (a) and the provisions thereof shall, against and in favour of the company and all parties assenting thereto or bound thereby, have the like effect as if they had been enacted by Parliament.

Enrolment and effect of scheme.

(a) There can be no doubt as to the right of appeal from decisions with respect to petitions for confirmation of schemes: (*Per V.-C. Wood* in *Re Cambrian Railways Co.'s Scheme*, L. R. 3 Ch. 290, *n*.)

Appeal.

By rule 23 of the General Order under this act, no order is to be enrolled for thirty days from the day of the same having been pronounced; by rule 24 a petition for a rehearing, and not the entering of a caveat, is the mode of proceeding by way of appeal, and such petition is to be presented within the thirty days limited for enrolment: and rules 25-28 regulate the procedure with respect to petitions for rehearing and enrolment. (See *post*, pp. 510, 511.)

Enrolment.

Rehearing.

Vice-Chancellor Giffard, pending a motion for leave to file a petition for a rehearing before the Lords Justices, restrained the enrolment of an order confirming a scheme: (*In re Devon & Somerset Railway Co.*, L. R. 6 Eq. 615.)

Enrolment restrained.

XIX. Notice of the confirmation and enrolment of the scheme shall be published in the *Gazette*.

Notice of confirmation of scheme.

XX. The company shall at all times keep at their principal office printed copies of the scheme, when confirmed and enrolled, and shall sell such copies to all persons desir-

Company to keep printed copies of scheme for sale.

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c. 127.

Penalty for
neglect.

ing to buy the same at a reasonable price, not exceeding sixpence for each copy.

If the company fail to comply with this provision they shall be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds for every day during which such failure continues after the first penalty is incurred, which penalties shall be recovered and applied as penalties under the Railways Clauses Consolidation Act, 1845, are recoverable and applicable.

Provision for
cases where
railways or part
in Scotland.

XXI. Where a company whose principal office is situate in *England* have a railway or part of a railway in *Scotland* (a), the following provisions shall have effect:

- (1.) Any scheme under this act shall be filed in the Court of Chancery in *England*;
- (2.) Where, after the filing of the scheme, any person who is not amenable to the jurisdiction of the Court of Chancery in *England* brings any action against the company in *Scotland*, the Court of Session may, on the application of the company by petition in a summary way, sist, stay, or interdict the same on such terms as the Court thinks fit;
- (3.) Notice of the filing of the scheme shall be published in the *Edinburgh Gazette*, and after such publication no diligence against the property of the company in *Scotland* shall be available for any person who is not amenable to the jurisdiction of the Court of Chancery in *England* without the leave of the Court of Session, to be obtained on petition in a summary way:

In this section the term "Court of Session" means either division of the Court of Session, or in time of vacation the Lord Ordinary officiating on bills.

Where Scotch
company have
railway or part
of railway in
England.

(a) By the Railway Companies (Scotland) Act, 1867, (30 & 31 Vict. c. 126.) s. 21, it is enacted that "where a company whose principal office is situate in Scotland have a railway or part of a railway in *England*, the following provisions shall have effect:

- (1.) Any petition for the approval and confirmation of a scheme under this act shall be presented to the Court of Session;
- (2.) When, after the presenting of any such petition, any person who is not amenable to the jurisdiction of the Court of Session brings any action or institutes any other proceeding against the company in *England*, the Court of Chancery may, on the application of the company on summons or motion, in a summary way restrain the same on such terms as the Court may think fit.

- (3.) Notice of the presenting of the petition shall be published in the *London Gazette*, and after such publication no execution, attachment, or other process against the property of the company in England shall be available for any person who is not amenable to the jurisdiction of the Court of Session without the leave of the Court of Chancery, to be obtained on summons or motion in a summary way. 30 & 31 Vict. c. 127.

XXII. The Lord-Chancellor of Great Britain, with the advice and assistance of the Lords Justices of the Court of Appeal in Chancery, the Master of the Rolls, and the Vice-Chancellor, or any two of those judges, and the Lord-Chancellor of *Ireland*, with the advice and assistance of the Lord Justice of Appeal in Chancery, and the Master of the Rolls, or one of them, may from time to time make general orders (a) for the regulation of the practice of the Courts of Chancery in *England* and *Ireland* respectively under this act. General order for regulation of procedure in Court of Chancery.

(a) A general order and rules were made for England on the 24th Jan. 1868, of January 1868, and, under rule 39 of the order, came into operation on the 3d of February 1868. See the order, *post*, following this act.

Power is by s. 22 of the Railways (Scotland) Act, 1867, (30 & 31 Scotland Vict. c. 126,) given to the Court of Session to make acts of sederunt to regulate the practice under that act.

LOAN CAPITAL.

XXIII. All money borrowed, or to be borrowed by a company on mortgage or bond or debenture stock under the provisions of any act authorising the borrowing thereof, shall have priority against the company, and the property from time to time of the company, over all other claims on account of any debts incurred or engagements entered into by them after the passing of this act: Provided always, that this priority shall not affect any claim against the company in respect of any rentcharge granted or to be granted by them in pursuance of the Lands Clauses Consolidation Act, 1845 (a), or the Lands Clauses Consolidation Acts Amendment Act, 1860 (b), or in respect of any rent or sum reserved by or payable under any lease granted or made to the company by any person in pursuance of any act relating to the company which is entitled to rank in priority to, or *pari passu* with the interest or dividends on the mortgages, bonds, and debenture stock; nor shall any- Priority of mortgages.

30 & 31 Vict.
c. 127.

thing hereinbefore contained (c) affect any claim for land taken, used, or occupied by the company for the purposes of the railway, or injuriously affected by the construction thereof, or by the exercise of any powers conferred on the company.

(a) ss. 10 & 11, *ante*, pp. 153, 154.

(b) *Ante*, pp. 309-312.

"Anything here-
inbefore con-
tained."

(c) It will be seen from the notes to s. 7, *ante*, that Vice-Chancellor Wood was of opinion that these words took away all jurisdiction under the act in respect of the claims of landowners; but Lord Cairns, L. J., was of a different opinion, and considered that proceedings by landowners might be stayed, although in a case in which a scheme under this act was held by him not to be an effectual means of providing for the claims of unpaid landowners, his lordship allowed the claimants to proceed to judgment, but not to execution without leave of the Court: (*Re Cambrian Railways Co.'s Scheme*, L. R. 3 Ch. 278.)

Power to issue
debenture stock,
subject to Part
III. of 26 & 27
Vict. c. 115.

XXIV. Any company may create and issue debenture stock, subject to the provisions of Part III. of the Companies Clauses Act, 1863 (a), (relating to debenture stock,) and the said Part III. shall, with respect to any special act of a company incorporating that part, whether passed or to be passed, be read and have effect as if the following words, that is to say, "not exceeding the rate prescribed in the special act, and if no rate is prescribed, then not exceeding the rate of four pounds per centum per annum," had not been inserted in sec. twenty-two of that act; and for the purposes of the present section this act shall be deemed a special act passed incorporating that part; and any special act of a company passed before the passing of this act prescribing any rate shall be read and have effect as if no rate had been prescribed therein.

(a) See pp. 43, n, 134-138, *ante*; and see p. 43, *ante*.

Restriction on
rate of interest
on debenture
stock already
authorised.

XXV. Provided that any debenture stock, the creation whereof has been authorised by a company, but which has not been issued before the passing of this act, shall not be issued on any terms other than those whereon it might have been issued if this act had not been passed, unless and until the issue thereof on terms other than as afore-said is, after the passing of this act, authorised by the company in manner provided in section twenty-two of the Companies Clauses Act, 1863 (a).

(a) See p. 134, *ante*.

XXVI. Money borrowed by a company for the purpose of paying off, and duly applied in paying off, bonds or mortgages of the company given or made under the statutory powers of the company, shall, so far as the same is so applied, be deemed money borrowed within, and not in excess of such statutory powers.

30 & 31 Vict.
c. 127.

Advances to
meet debentures
falling due.

SHARE CAPITAL

XXVII. Section twenty-one of the Companies Clauses Act, 1863 (a), shall, with respect to any special act of a company incorporating Part II. of that act, whether passed or to be passed, be read and have effect as if the following words, that is to say, "but so that not less than the full nominal amount of any share or portion of stock be payable or paid in respect thereof," had not been inserted in that section.

Power to issue
shares or stock
at discount.

(a) See p. 134, *ante*.

XXVIII. Any shares forming part of the capital (whether original or additional) authorised to be raised by any special act of a company passed before the present session, which have not been disposed of, may be disposed of in manner provided by Part II. of the Companies Clauses Act, 1863 (a), as amended by this act, and that part, as so amended, shall be deemed incorporated with such special act accordingly.

Power to issue
residue of original or other
capital at discount.

(a) See p. 131, *ante*.

XXIX. Provided that any shares the creation whereof has been authorised by a company, but which have not been issued before the passing of this act, shall not be issued on any terms other than those whereon the same might have been issued if this act had not been passed, unless and until the issue thereof on terms other than as aforesaid is, after the passing of this act, authorised by the company in manner provided by Part II. of the Companies Clauses Act, 1863 (a).

Restrictions on
issuing at discount of shares
or stock already
authorised.

(a) See pp. 38 and 131, *ante*.

XXX. No dividend shall be declared by a company until the auditors (a) have certified (b) that the half-yearly

Audit of railway
accounts.

30 & 31 Vict.
c. 127.

accounts (c) proposed to be issued contain a full and true statement of the financial condition of the company, and that the dividend proposed to be declared on any shares is *bonâ fide* due thereon after charging the revenue of the half year with all expenses which ought to be paid thereout in the judgment of the auditors; but if the directors differ from the judgment of the auditors with respect to the payment of any such expenses out of the revenue of the half year, such difference shall, if the directors desire it, be stated in the Report to the shareholders, and the company in general meeting may decide thereon, subject to all the provisions of the law then existing, and such decision shall, for the purposes of the dividend, be final and binding; but if no such difference is stated, or if no decision is given on any such difference, the judgment of the auditors shall be final and binding; and the auditors may examine the books of the company at all reasonable times, and may call for such further accounts, and such vouchers, papers, and information as they think fit, and the directors and officers of the company shall produce and give the same as far as they can, and the auditors may refuse to certify as aforesaid until they have received the same; and the auditors may at any time add to their certificate, or issue to the shareholders independently at the cost of the company, any statement respecting the financial condition and prospects of the company which they think material for the information of the shareholders.

Effect of certificates.

(a) As to auditors and their duties, see pp. 101, 102, *ante*.

(b) The certificate of the auditors under this section does not conclude the questions as to the legality of charge alleged to be in contravention of the railway acts, *e.g.*, the charging of improper sums to the capital account: (*Bloxam v. Metropolitan Railway Co.*, L. R. 3 Ch. 337.)

Uniform accounts.

(c) Railway companies are, by 31 & 32 Vict. c. 119, (*post*), to keep their accounts in the forms in the schedules thereto.

ABANDONMENT.

Provisions of 13 & 14 Vict. c. 63, as to abandonment of railways, to apply to all companies authorised to make railways before this session.

XXXI. The Abandonment of Railways Act, 1850 (a), shall extend and apply to all companies authorised to make railways by act of Parliament passed before the present session, subject and according to the following provisions:

(1.) Section thirty-one of that act shall be read and have effect as if the Companies Act, 1862,* were

referred to therein instead of the Joint Stock Companies Winding-up Act, 1848, or any act amending the same:

30 & 31 Vict.
c. 127.

- (2.) Section thirty-five of the said act of 1850 shall be read and have effect as if the date of the twenty-first day of May one thousand eight hundred and sixty-seven were therein substituted for the date of the eleventh day of February one thousand eight hundred and fifty:
- (3.) Nothing in the said act of 1850 or this act shall be deemed to make it obligatory on the Board of Trade to authorise the abandonment of a railway or part of a railway on any application in that behalf, and the Board of Trade shall not authorise such abandonment in any case unless it appears to them just and expedient so to do, and the Board of Trade may, if they think fit, refuse in any case to authorise such abandonment, except on condition of the money deposited as security for the completion of the railway, or the stocks, funds, or securities on which the same is invested, or the money secured by any bond conditioned for completion of the railway, or for payment of money in default thereof, being applied as part of the assets of the company.

(a) See this Act in the Appendix, *post*.

XXXII. Where it is shown to the satisfaction of the Board of Trade, with respect to a company authorised to make a railway by act of Parliament passed before the present session, that no part, or a part less than three-fifths, of the share capital of the company, has been subscribed, the Board of Trade may, if they think fit, proceed under the said act of 1850, as extended by this act, on the application of any person named in the special act incorporating the company as a member or director thereof, or of any person named in the warrant or order directing payment of any deposit under any standing order of either House of Parliament, or of any person who has lent the

Abandonment
where three-
fifths of capital
not subscribed.

* It has not been considered advisable to print the Companies Act, 1862, in this work, since, by a full consideration of its provisions, we should far exceed our limits; and this omission is the less important as many excellent treatises already exist with respect to them. Practically moreover, the constitution of railway companies has been almost entirely independent of the provisions of that act.

30 & 31 Vict.
c. 127.

amount of such deposit, or any part thereof, or has entered into any bond conditioned for the completion of the railway, or for payment of any money in default thereof, and without the preliminary consent of a meeting of shareholders of the company.

Compensation
for damage to
land by entry,
&c.

XXXIII. The authority given under this act for the abandonment by a company of any railway or part of a railway shall not effect the right of the owner or occupier of any lands that have been temporarily occupied by the company to receive compensation, in accordance with the provisions of the Railways Clauses Consolidation Act, 1845, for such temporary occupation, or for any loss, damage, or injury that has been sustained by him by reason thereof, or of the exercise as regards such lands of any of the company's powers.

Cancellation of
bonds for com-
pletion of rail-
ways, and release
of deposit.

XXXIV. Where a warrant for abandonment is granted under the Abandonment of Railways Act, 1850, as extended by this act, the Commissioners of Her Majesty's Treasury may cancel and deliver up any bond entered into by or on behalf of a railway company for securing the completion of a railway, or, in case the abandonment be of part of the railway only, may cancel and deliver up such bond on receiving another bond in lieu thereof conditioned for payment of a due proportionate part of the amount secured by such former bond; and any money remaining deposited as security for the completion of the railway, or the stocks, funds, or securities in which the sum is invested, or any bank annuities, stocks, funds, securities, or Exchequer bills remaining deposited as such security, or in case the abandonment authorised is of part only of a railway, then such proportionate part as the Board of Trade thinks fit of such money, stocks, funds, securities, annuities, or Exchequer bills, shall be paid, transferred, or delivered out to the persons who would be entitled to receive the same if the railway had been completed and opened for public traffic; and the Court of Chancery shall, on the application of those persons, order payment, transfer, or delivery out thereof accordingly, on a certificate of the Board of Trade certifying that such a warrant for abandonment has been granted.

Protection for
Board of Trade
in case of error.

XXXV. The issuing in any case of any warrant or

certificate relating to deposit, or to any money, stocks, funds, securities, bank annuities, or Exchequer bills deposited, or any error in any such warrant or certificate, or in relation thereto, shall not make the Board of Trade, or the person signing the warrant or certificate on their behalf, in any manner liable for or in respect of the money, stocks, funds, securities, bank annuities, or Exchequer bills deposited, or the interest of or dividends on the same, or any part thereof respectively.

30 & 31 Vict.
c. 127.

PURCHASE OF LANDS.

XXXVI. Where after the passing of this act a company exercise the powers conferred on the promoters of the undertaking by section eighty-five of the Lands Clauses Consolidation Act, 1845 (*a*), the following provisions shall have effect:

Amendment (as
to railway com-
panies) of s. 85
of 8 & 9 Vict.
c. 18.

- (1.) The surveyor to be appointed as in that section provided shall be appointed by the Board of Trade, instead of by two justices, and all the provisions of that act relative to a surveyor appointed by two justices shall apply to a surveyor so appointed by the Board of Trade.
- (2.) The company shall give not less than seven days' notice of their intention to apply to the Board of Trade for the appointment of a surveyor to any party interested in or entitled to sell and convey the lands in question, and not consenting to the entry of the company.
- (3.) The valuation to be made by the surveyor so appointed shall include the amount of compensation for all damage and injury to be sustained by reason of the exercise of the powers conferred by the said section, as far as such damage and injury are capable of estimation.
- (4.) The sureties to the bond to be given by the company under that section shall, in case the parties differ, instead of being approved of by two justices, be approved of by the Board of Trade, after hearing the parties.

(*a*) See *ante*, pp. 253 and 258.

It has been decided upon this section that in every case where a company intends to enter under s. 85 of the Lands Clauses Act, after 20th August 1867, the surveyor must be appointed under this

Appointment of
surveyor by
Board of Trade.

504 ' *The Railway Companies Act, 1867, s. 37.*

30 & 31 Vict. c. 127. section, although a valuation under s. 85 have previously been made: (*Field v. Carnarvon & Llanberis Railway Co.*, L. R. 5 Eq. 190; 37 L. J. Ch. 176; 17 L. T. N. S. 534.)

Costs of arbitrations as to lands.

XXXVII. Where, in *England*, under the Lands Clauses Consolidation Act, 1845 (*a*), or any act incorporating the same, a question of disputed compensation relating to lands required to be purchased or taken by a company is determined by arbitration, the costs of and incidental to the arbitration and award shall, if either party so requires, be settled, as between the parties, by one of the masters of the Court of Queen's Bench.

(*a*) See s. 34 of the Lands Clauses Act, 1845, and the notes thereon, pp. 172, 173, *ante*.

GENERAL ORDER AND RULES,

(Friday, 24th of January 1868,)

TO REGULATE THE MODE OF PROCEDURE UNDER THE
RAILWAY COMPANIES ACT, 1867.

PART I.

SCHEMES OF ARRANGEMENT.

PREPARATION AND FILING OF SCHEME.

I. Every scheme to be filed in the Court of Chancery, pursuant to the statute, 30th and 31st Victoria, chapter 127, section 6, and every declaration, affidavit, petition, summons, notice, or other proceeding relative thereto, shall be intitled in the manner of "The Railway Companies Act, 1867," and in the matter of the company in question.

Scheme to be intitled in the matters of the act and the company.

II. Every such scheme shall be marked, either with the words "Lord Chancellor" and the name of one of the Vice-Chancellors, or with the words "Master of the Rolls," and the matter of such scheme (unless removed by some special order of the Lord Chancellor or the Lords Justices) shall accordingly be attached to the Court of such Vice-Chancellor, or to the Court of the Master of Rolls, as the case may be, in like manner and for the same purposes as causes are attached to a particular Court.

To be marked with name of judge to whose Court it is attached.

III. Every scheme to be filed as aforesaid shall be printed on paper of the same size and description, and in the same style and manner, as bills in Chancery are required to be printed, or shall be written bookwise upon paper of the same size and description as last aforesaid.

Schemes to be printed or written.

IV. Every declaration and affidavit to be filed as men-

Declarations and affidavits.

GENERAL ORDER
AND RULES.

tioned in the 6th section of the said act, shall be written bookwise upon paper of the same size and description as that on which bills are printed.

Filing of scheme.

V. Every such scheme shall be filed in the office of the clerks of records and writs, and the declaration and affidavit required by section 6 of the said act shall be annexed to such scheme and filed at the same time therewith, and the clerks of records and writs shall not file any such scheme unless accompanied by such declaration and affidavit.

Indorsement of
solicitor's name

VI. There shall be indorsed upon every scheme so filed as aforesaid the name and address of the solicitor and London agent (if any) of the company, and also the address for service of such solicitor in cases where an address for service is required by the general orders of the Court.

Written scheme.

VII. Where a written scheme is filed, the person bringing the same to be filed, shall, at the same time, leave with the clerks of records and writs a fair copy thereof, and the clerks of records and writs are to examine such copy with the scheme filed, and return it so examined with a certificate thereon that it is correct and proper to be printed.

Printed scheme.

VIII. The directors are then to cause the scheme to be printed from such certified copy, on paper of the same size and description, and in the same type, style, and manner, as bills are required to be printed, and, before the expiration of four days from the filing of the scheme, are to leave a printed copy thereof with the clerks of records and writs, with a written certificate thereon by the solicitor of the company that such print is a true copy of the scheme so certified, and after the expiration of such four days, no evidence of the scheme having been filed shall be admissible until such printed copy thereof has been filed.

Numbering of
pages.

IX. Every fifth line of each page of a printed scheme shall be numbered.

COPIES OF SCHEME.

GENERAL ORDER
AND RULES.

X. At any time after the expiration of four days from the filing of a scheme, whether printed or written, any person may demand, by a requisition in writing, delivered at the principal office of the company, or at the office of their solicitor, or of his London agent, (if any,) any number, not exceeding ten, of printed copies of the scheme, and the copies so required shall on such demand be delivered to the person so requiring the same, with a written certificate thereon by the solicitor of the company that they are true copies of the scheme filed.

Copies of scheme.

XI. Every such copy is on delivery to be paid for at the rate of one halfpenny per folio, except in the case provided for by the 20th section of the said act, in which case it is to be paid for at the rate prescribed by the said act.

Payment for
copies.

NOTICE OF FILING SCHEME.

XII. The notice, to be published in the "Gazette," of the filing of the scheme shall be signed by the solicitor of the company, or his London agent, and shall state whether the scheme contains any provisions for settling and defining any rights of shareholders among themselves, or for raising any and what amount of share or loan capital, and which, and shall set forth the name and address of the solicitor and London agent (if any) of the company, and may be in the Form No. 1 in the 3d Schedule hereto, with such variations as the circumstances of the case may require.

Notice of filing
in "Gazette."

CERTIFICATE OF FILING.

XIII. When a scheme has been filed, one of the clerks of records and writs shall, at the request of any person, give and sign a certificate of the filing thereof, or of the filing of a printed copy thereof; and such certificate may be in the following form, with such variations as the circumstances of the case may require.

Certificate of
filing by clerk of
records and writs.

In the matter of the Railway Companies Act, 1867, and in the matter of the *Railway Company.*

Form of certi-
cate.

I do hereby certify that a [printed or written, as the case may be] scheme of arrangement between the

Form.

GENERAL ORDER
AND RULES.

above-named company and their creditors, under the statute 30 and 31 Victoria, chapter 127, section 6, was, on the day of , 18 , duly filed in the High Court of Chancery in England, together with the declaration and affidavit required by the said statute, [and that a printed copy of such scheme was on the day of , duly filed in the said Court pursuant to the general order of Court made in that behalf,] as appears by my book. Dated, &c.

A. B.,

Clerk of Records and writs of the High Court of Chancery in England.

RESTRAINING ACTIONS AFTER SCHEME FILED.

No order to restrain actions unless company undertake to be answerable for damages.

XIV. No order, under section 7 of the said act, for restraining an action against the company, by reason of a scheme having been filed, shall be made, except on an undertaking by the company to be answerable in such damages (if any) as the Court, or the judge in chambers, may think fit to award in the event of the plaintiff being ultimately held entitled to proceed with such action; and on such further terms (if any) as the Court or judge may think reasonable.

PETITION FOR CONFIRMATION OF SCHEME.

Petition to be presented by majority of directors.

Form of petition.

XV. Every petition for confirmation of a scheme shall be presented by the directors, or the major part of them. Such petition shall not set forth the scheme, but only refer thereto; and may be in the form No. 2, in the third schedule hereto, with such variations as the circumstances of the case may require.

Petitioners to represent company.

XVI. The petitioners presenting such petition as aforesaid shall, for the purposes of such petition, be treated as representing the company, and the company shall not otherwise appear on the hearing of such petition.

Application for hearing of petition.

XVII. When any petition to confirm a scheme is presented, the directors shall apply to the judge in chambers to appoint the day on which the same is to come into the

paper for hearing, such day not to be before the expiration of three weeks from the time of such application, and shall cause a notice of the presentation thereof to be inserted as follows (that is to say):

GENERAL ORDER
AND RULES.

Notice of presentation.

- (1.) In the case of a company whose principal office is within ten miles from the General Post-Office, in the *London Gazette*; and in such two London daily morning newspapers as the judge in chambers shall direct.
- (2.) In the case of any other company, in the *London Gazette*, and in such two local newspapers circulating in the district where the principal office of such company is situate, as the judge in chambers shall direct.

Such notice shall state the day on which the scheme was filed, and the day on which the petition was presented, and the day on which the same is directed to come into the paper for hearing, and the name and address of the solicitor and London agent (if any) of the company, and may be in the form No. 3 in the third schedule hereto, with such variations as the circumstances of the case may require.

XVIII. The petition shall not come on to be heard until at least fourteen clear days after the insertion of such notice as aforesaid. Such notice shall, at least once in every entire week, reckoned from Sunday morning to Saturday evening, which shall have elapsed between the time of the first insertion thereof, and the day on which such petition is directed to come into the paper for hearing, be again inserted in such two London or local newspapers as aforesaid on such day or days as the judge in chambers shall direct.

To be heard not less than fourteen days after notice.

XIX. Any creditor, shareholder, or other party whose rights or interests are affected by such scheme, and who shall be desirous to be heard in opposition to the confirmation thereof, shall, at least two clear days before the day on which the petition for confirmation is directed to come into the paper for hearing, enter an appearance at the office of the clerks of records and writs; and, in default of so doing, shall not be entitled to be heard unless by the special leave of the Court.

Parties desirous of being heard to appear two days before hearing.

XX. Any person so entering an appearance shall be deemed to have submitted himself to the jurisdiction of the Court as to the payment of costs and otherwise.

Submission to Court by appearance.

GENERAL ORDER
AND RULES.

CONFIRMATION OF SCHEME.

Enrolment of
order.

XXI. No scheme shall be deemed to have been confirmed by the Court of Chancery until an order for confirming the same has been enrolled.

Notice of order.

XXII. Notice of any order for confirming a scheme shall, at least once in every entire week, reckoned from Sunday morning to Saturday evening, which shall elapse between the pronouncing of such order and the expiration of thirty days from the pronouncing thereof, be inserted in such two newspapers as shall have been appointed by the judge for the insertion of advertisements under the 17th rule hereof. And the clerk of records and writs shall not give his certificate that the docket of the enrolment of any such order is correct, unless the newspapers containing such notices be produced to him when the docket of such enrolment is presented to him for inspection.

Thirty days before
enrolment.

XXIII. No order for confirming a scheme shall be enrolled until the expiration of thirty days from the day of the same having been pronounced, exclusive of vacations.

No caveat to be
entered.

XXIV. No caveat shall be entered to stay the enrolment^(a) of any order for confirming a scheme, but every such order may be enrolled at the expiration of thirty days from the day of the same being pronounced, unless in the meantime a petition for a rehearing shall have been presented, and an order for setting down such petition obtained and served, such thirty days to be exclusive of vacations.

(a) See *ante*, p. 495.

Special leave of
Appeal Court for
rehearing.

XXV. No petition for a rehearing either before the same judge or before the Lord Chancellor or the Lords Justices, of the case on which any order for confirming or order refusing to confirm a scheme has been made, shall, unless by the special leave of the Lord Chancellor or the Lords Justices, be presented after the expiration of thirty days, exclusive of vacations, from the day on which such order was pronounced, notwithstanding that such order may not have been enrolled.

Order for re-
hearing.

XXVI. Where an order has been made for confirming a scheme, no person who has neither entered an appear-

ance as aforesaid, nor by virtue of such special leave as aforesaid been heard in opposition to the confirmation of the scheme, shall be at liberty to present a petition for rehearing before the same judge or before the Lord Chancellor or the Lords Justices, unless the Lord Chancellor or the Lords Justices shall, by special order to be applied for by motion on notice to the company to be served on their solicitor or at their principal office, give leave to such person to present a petition for a rehearing.

GENERAL ORDER
AND RULES.

XXVII. Where any petition for a rehearing of a petition for confirmation of a scheme is presented, the same certificate of counsel, the same subscription by the petitioner or his solicitor with respect to costs, and the same deposit shall be requisite as are required for a rehearing when a decree has been made at the hearing of a cause.

Certificate of
counsel.

Security for
costs.

XXVIII. The enrolment of a scheme in pursuance of the 18th section of the said act shall be effected in the same manner as the enrolment of a deed directed by statute to be enrolled in the Court of Chancery.

Enrolment of
scheme.

PART II.

PROTECTION OF ROLLING STOCK AND PLANT.

XXIX. Every petition under "The Railway Companies Act, 1867," section 4, shall be intituled in the matter of the act and in the matter of the company in question, and shall be marked either with the words "Lord Chancellor," and the name of one of the Vice-Chancellors, or with the words "Master of the Rolls."

Petitions under
s. 4 of the act.

XXX. Such petition shall be served on the company only, but the Court may at the hearing, if it shall so think fit, adjourn the same for the purpose of service on such other parties, if any, as the Court shall think fit.

To be served on
company.

XXXI. Every order appointing a receiver or manager under the last-mentioned section shall direct such accounts and inquiries as the Court may think fit for ascertaining

Order appointing
receiver or
manager.

GENERAL ORDER
AND RULES.
—

the debts of the company and the rights and priorities of the persons interested in the moneys to come to the hands of such receiver or manager.

Summons under
s. 5 of the act.

XXXII. Every summons in Chancery under the "Railway Companies Act, 1867," section 5, shall be intituled in the matter of the said act and in the cause or matter in which the execution in question was issued, and such summons shall be issued out of the chambers of the judge to whose court such cause or matter is attached, and such rules and practice of the Court of Chancery as are applicable to summonses for the purpose of proceedings not originating in chambers and to the proceedings thereunder shall be applicable to such summons and the proceedings thereunder.

PART III.

GENERAL PROVISIONS.

Orders to be
drawn up in
chambers.

XXXIII. All orders made in chambers under the "Railway Companies Act, 1867," shall be drawn up in chambers, unless specially directed to be drawn up by the registrar, and shall be entered in the same manner and in the same office as other orders drawn up in chambers.

General orders to
apply to cases
under the act.

XXXIV. In cases not expressly provided for by the said act or by the rules of this order, the general orders and practice of the Court (including the course of proceeding and practice in the judges' chambers, and the course of proceeding and practice as to rehearings before the same judge, or before the Lord Chancellor or Lords Justices) shall, so far as such general orders and practice are applicable, and not inconsistent with the said act or this order, apply to all proceedings in the Court of Chancery under the said act.

Enlarging and
abridging times.

XXXV. The power of the Court and of the judge in chambers to enlarge or abridge the time for doing any act or taking any proceeding, to adjourn or review any proceeding, and to give any direction as to the course of pro-

ceeding, shall be the same in proceedings in Chancery under the said act as in proceedings under the ordinary jurisdiction of the Court. GENERAL ORDER AND RULES.

XXXVI. Solicitors shall be entitled to charge and be allowed the fees set forth or referred to in the 1st Schedule hereto unless the Court or judge shall otherwise specially direct. Costs.

XXXVII. The fees of Court set forth and referred to in the 2d Schedule hereto shall be paid in relation to proceedings in Chancery under the said act, and shall be collected by means of stamps in manner provided by the general orders of the Court. Court fees.

XXXVIII. The general interpretation clause contained in the consolidated orders of the Court of Chancery shall extend and apply to this order, and this order shall be deemed one of the general orders of the Court. Interpretation.

XXXIX. This order shall come into operation on Monday the 3d day of February 1868, and shall apply to all schemes filed under the said act, and to all proceedings in Chancery to be had under the same act, provided always that all proceedings taken under the said act before this order shall have come into operation shall have the same validity as they would have had if this order had not been made. Order to come into operation 3d February 1868.

THE FIRST SCHEDULE.

FEES AND CHARGES TO BE ALLOWED TO SOLICITORS.

For all duties performed under the Railway Companies Act, 1867, such of the fees on the higher scale authorised by the 2d rule of the 38th of the Consolidated Orders and the Regulations as to Solicitors' Fees subjoined thereto, as are applicable, unless the court or judge shall otherwise specially direct.

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GENERAL ORDER
AND RULES

THE SECOND SCHEDULE.

FEES TO BE COLLECTED BY MEANS OF STAMPS.

In the Judges' Chambers.

Such of the fees as are directed to be paid and collected by the 2d rule of the 39th of the Consolidated Orders, and the regulations subjoined thereto, as are applicable.

In the Registrars' Office.

Such of the fees as are directed to be paid and collected by the 2d rule of the 39th of the Consolidated Orders, and the regulations subjoined thereto, as are applicable.

In the Record and Writ Clerks' Office.

For filing every scheme of arrangement, . . .	1	0	0
For every certificate of filing a scheme of arrangement, . . .	0	5	0
Such other fees as are directed to be paid and collected by the 2d rule of the 39th of the Consolidated Orders, and the regulations subjoined thereto, as are applicable.			

In the Examiners' Office.

Such of the fees as are directed to be paid and collected by the 2d rule of the 39th of the Consolidated Orders, and the regulations subjoined thereto, as are applicable.

In the Taxing Masters' Office.

Such of the fees as are directed to be paid and collected by the 2d rule of the 39th of the Consolidated Orders, and the regulations subjoined thereto, as are applicable.

In the Office of the Lord Chancellor's Principal Secretary.

For every petition,	1	0	0
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In the Office of the Secretary at the Rolls.

For every petition,	1	0	0
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THE THIRD SCHEDULE.

GENERAL ORDER AND RULES.

No. 1. *Advertisement of Scheme.*

[See Rule 10.]

In the matter of the Railway
Company; and in the matter of the Railway
Companies Act, 1867.

Notice is hereby given, that on the _____ day of _____ 18____, a scheme of arrangement between the above-named company and their creditors [state here whether the scheme contains or not any provisions for settling the rights of any and what classes of shareholders as among themselves, or for raising additional share or loan capital, and which, and to what extent] was filed in the Court of Chancery, and a copy of the said scheme will be furnished to any person requiring the same by the undersigned, or at the office of the company, at _____ on payment of the regulated charges for the same.

A. and B., of [Agents for C. and D., of _____],
Solicitors for the company.

No. 2. *Petition to confirm Scheme.*

[See Rule 15.]

In the matter of the Railway
Company; and in the matter of the Railway
Companies Act, 1867.

To the Right Honourable the Lord High Chancellor of Great Britain [*or, To the Right Honourable the Master of the Rolls, as the case may be.*]

The humble petition of
above-named company

Showeth,

That on the _____ day of _____, the directors of the above-named company filed in this Honourable Court, a scheme of arrangement between the above-named company and their creditors.

Your petitioners therefore humbly pray that the scheme so filed as aforesaid may be confirmed by the order of this Honourable Court.

And your petitioners will ever pray, &c.

[See Rule 17.]

In the matter of the Railway Company, and in the matter of the Railway Companies Act, 1867.

Notice is hereby given that a petition was, on the
day of 18 , presented to the Lord Chancellor
[or the Master of the Rolls] by the directors of the above-named
company, praying the confirmation of a scheme of arrangement
between the said company and their creditors, filed in the Court of
Chancery on the day of .
And that the said petition is directed to be heard before the Vice-
Chancellor Sir [or before the Master of
the Rolls] on the day of , 18 ,
and any person whose interests are affected by such scheme, and
who may be desirous to oppose the making of an order for the con-
firmation thereof under the above act, should enter an appearance
at the Office of the Clerks of Record and Writs on or before the
day of 18 , and appear by
himself or counsel at the hearing of the said petition. And a copy
of the scheme and petition will be furnished to any person requir-
ing the same by the undersigned, or at the office of the company at
, on payment of the regulated charge for
the same.

A. and B., of [Agents for C. and D., of
Solicitors for the petitioners.]

CHELMSFORD, C.
ROMILLY, M. R.
CAIRNS, L. J.
JOHN STUART, V.-C
W. P. WOOD, V.-C.
RICHARD MALINS, V.-C

THE REGULATION OF RAILWAYS ACT, 1868.

(31 & 32 VICT. c. 119.)

An Act to amend the Law relating to Railways.—[31st July 1868.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PRELIMINARY.

I. This act may be cited as the Regulation of Railways Act, 1868. Short title.

II. In this act—

The term "railway" means the whole or any portion of a railway or tramway, whether worked by steam or otherwise :

Interpretation
of terms.

The term "company" means a company incorporated, either before or after the passing of this act, for the purpose of constructing, maintaining, or working a railway in the United Kingdom, (either alone or in conjunction with any other purpose,) and includes, except when otherwise expressed, any individual or individuals not incorporated who are owners or lessees of a railway in the United Kingdom, or parties to an agreement for working a railway in the United Kingdom :

The term "person" includes a body corporate.

I.—ACCOUNTS, AUDIT, &c.

III. Every incorporated company, seven days at least before each ordinary half-yearly meeting held after the thirty-first day of December one thousand eight hundred and sixty-eight, shall prepare and print, according to the Uniform accounts, &c., to be kept.

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forms contained in the first schedule to this act, a statement of accounts (*a*) and balance-sheet for the last preceding half-year, and the other statements and certificates required by the same schedule, and an estimate of the proposed expenditure out of capital (*b*) for the next ensuing half-year, and such statement of accounts and balance-sheet shall be the statement of accounts and balance-sheet which are submitted to the auditors of the company (*c*). Every company which makes default in complying with this section shall be liable to a penalty not exceeding five pounds for every day during which such default continues. The Board of Trade, with the consent of a company, may alter the said forms as regards such company for the purpose of adapting them to the circumstances of such company, or of better carrying into effect the objects of this section.

(*a*) See and compare s. 115 of the Companies Clauses Act, 1845, *ante*, p. 104.

(*b*) See s. 121 of the Companies Clauses Act, 1845, (*ante*, p. 111,) which forbid the reduction of the capital by the payment thereof of any dividend.

(*c*) As to the keeping of loan capital accounts, see the Railway Companies Securities Act, 1866, (29 & 30 Vict. c. 108,) in the Appendix, *post*.

Accounts, &c.,
to be signed, and
printed copies
distributed.

IV. Every statement of accounts, balance-sheet, and estimate of expenditure, prepared as required by this act, shall be signed by the chairman or deputy-chairman of the directors and by the accountant or other officer in charge of the accounts of the company, and shall be preserved at the company's principal office. A printed copy thereof shall be forwarded to the Board of Trade, and at all times after the date at which it is required to be printed be given, on application, to every person who holds any ordinary or preference share or stock in the company, or any mortgage, debenture, or debenture stock of the company; and every such person may at all reasonable times, without fee or charge, peruse the original in the possession of the company. Any company which acts in contravention of this section shall be liable for each offence to a penalty not exceeding fifty pounds.

Penalty for falsi-
fying accounts,
&c.

V. If any statement, balance-sheet, estimate, or report which is required by this act is false in any particular to

the knowledge of any person who signs the same (a), such person shall be liable, on conviction thereof on indictment, to fine and imprisonment, or on summary conviction thereof to a penalty not exceeding fifty pounds.

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(a) By s. 100 of the Companies Clauses Act, 1845, (*ante*, p. 100,) an indemnity is given to directors with respect to acts lawfully done by them.

VI. The Board of Trade may appoint one or more competent inspectors to examine into the affairs of an incorporated company and the condition of its undertaking, or any part thereof, and to report thereon, upon any one of the applications following; that is to say,

Examination of
affairs by inspectors (a).

1. Upon application made in pursuance of a resolution passed at a meeting of directors:
2. Upon application by the holders of not less than two-fifths part of the aggregate amount of the ordinary shares or stock of the company for the time being issued:
3. Upon application by the holders of not less than one-half of the aggregate amount of the mortgages, debentures, and debenture stock (if any) of the company for the time being issued:
4. Upon application by the holders of not less than two-fifths of the aggregate amount of the guaranteed or preference shares or stock of the company for the time being issued, provided that the preference capital issued amounts to not less than one-third of the whole share capital of the company.

(a) It will be seen by reference to the Railway Companies Act, 1867, (*ante*, p. 489,) that the power to file a scheme under that act, where a company's affairs become involved, is given to the directors only.

Railway Companies Act, 1867.

VII. The application shall be made in writing, signed by the applicants, and shall be supported by such evidence as the Board of Trade may require, for the purpose of showing that the applicants have good reason for requiring such examination to be made; the Board of Trade may also, before appointing any inspector or inspectors, require the applicants to give security for payment of the costs of the inquiry.

Application to be supported by evidence.

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Inspection of
company's books
and property.

VIII. It shall be the duty of the directors, officers, and agents of the company to produce, for the examination of the inspectors, all books and documents relating to the affairs of the company in their custody or power, and to afford to the inspectors all reasonable facilities for the inspection of the property and undertaking of the company. Any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly. Any person who, when so examined on oath, makes any false statement, knowing the same to be false, shall be guilty of perjury.

If any director, officer, or agent refuses to produce any book or document hereby directed to be produced, or to afford the facilities for inspection hereby required to be afforded, or if any officer or agent refuses to answer any question relating to the affairs of the company, he shall incur a penalty of five pounds for every day during which the refusal continues.

Result of exam-
ination, how
dealt with.

IX. Upon the conclusion of the examination, the inspectors shall report their opinion to the Board of Trade and to the company, and the company shall print the same, and deliver a copy thereof to the Board of Trade, and, on application, to any person who holds any ordinary or preference share or stock, or any mortgage, debenture, or debenture stock of the company. All expenses of and incidental to any such examination as aforesaid shall be defrayed by the persons upon whose application the inspectors were appointed, unless the Board of Trade shall direct the same or any portion thereof to be paid by the company, which they are hereby authorised to do.

Power of com-
pany to appoint
inspectors.

X. Any company may by resolution at an extraordinary meeting, appoint inspectors for the purpose of examining into the affairs of the company and the condition of the company's undertaking. The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Board of Trade, and shall make their report in such manner and to such persons as the company in general meeting directs; and the directors, officers, and agents of the company shall incur the same penalties, in case of any refusal to produce any book or document by this act required to be produced to such

inspectors, or to afford the facilities for inspection by this act required to be afforded, or to answer any question, as they would have incurred if such inspectors had been appointed by the Board of Trade.

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XI. Whenever, after the passing of this act, section one hundred and two of the Companies Clauses Consolidation Act, 1845 (*a*), is incorporated in a certificate or special act relating to a railway company, it shall be construed as if the words, "where no qualification shall be prescribed by the special act, every auditor shall have at least one share in the undertaking," were omitted therefrom; and so much of every certificate and special act relating to a railway company, and in force at the passing of this act, as incorporates that portion of the said section, and so much of any special act relating to a railway company, and so in force, as contains a like provision, is hereby repealed.

Auditor not
necessarily a
shareholder.

(*a*) *Ante*, p. 101.

XII. With respect to the auditors of the company, the following provisions shall have effect:

Auditors of
company, and
appointment of
auditor by
Board of Trade.

- (1.) The Board of Trade may, upon application made in pursuance of a resolution passed at a meeting of the directors or at a general meeting of the company, appoint an auditor in addition to the auditors of such company, and it shall not be necessary for any such auditor to be a shareholder in the company:
- (2.) The company shall pay to such auditor appointed by the Board of Trade such reasonable remuneration as the Board of Trade may prescribe:
- (3.) The auditor so appointed shall have the same duties and powers as the auditors of the company, and shall report to the company:
- (4.) Where, in consequence of such appointment of an auditor or otherwise, there are three or more auditors, the company may declare a dividend if the majority of such auditors certify in manner required by section thirty of the Railway Companies Act, 1867 (*a*), and the Railway Companies (Scotland) Act, 1867, respectively:
- (5.) Where there is a difference of opinion among such auditors, the auditor who so differs shall issue to the

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shareholders, at the cost of the company, such statement respecting the grounds on which he differs from his colleagues, and respecting the financial condition and prospects of the company, as he thinks material for the information of the shareholders.

(a) *Ante*, p. 511.

Issue of preferred
and deferred
ordinary stock.

XIII. Any company which in the year immediately preceding has paid a dividend on their ordinary stock of not less than three pounds per centum per annum may, pursuant to the resolution of an extraordinary general meeting, divide their paid-up ordinary stock into two classes, to be and to be called the one preferred ordinary stock, and the other deferred ordinary stock (a), and issue the same subject and according to the following provisions, and with the following consequences; (that is to say,)

- (1.) Preferred and deferred ordinary stock shall be issued only in substitution for equal amounts of paid-up ordinary stock, and by way of division of portions of ordinary stock into two equal parts:
- (2.) Such division may be made at any time, on the request in writing of the holder of paid-up ordinary stock, but not otherwise; and such request may apply to the whole of the ordinary stock of such holder, or to any portion thereof divisible into twentieth parts:
- (3.) Preferred ordinary stock and deferred ordinary stock shall not be issued except in sums of ten pounds or multiples of ten pounds:
- (4.) The certificates for any ordinary stock divided into preferred and deferred ordinary stock shall before such division be delivered up to the company, and shall be cancelled by them, and certificates for preferred ordinary stock and deferred ordinary stock shall be issued *gratis* in exchange by the company:
- (5.) If in any case there is any part of the ordinary stock held by a stockholder comprised in one certificate which he does not desire to be divided, or which is incapable of division, under the provisions of this act, the company shall issue to him *gratis* a certificate for that amount as ordinary stock:
- (6.) As between preferred ordinary stock and deferred ordinary stock, preferred ordinary stock shall bear a

fixed maximum dividend at the rate of six per centum per annum : 31 & 32 Vict.
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- (7.) In respect of dividend to the extent of the maximum aforesaid, preferred ordinary stock shall at the time of its creation, and at all times afterwards, have priority over deferred ordinary stock created or to be created, and shall rank *pari passu* with the undivided ordinary stock and the ordinary shares of the company created or to be created ; and in respect of dividend, preferred ordinary stock shall at all times and to all intents rank after all preference and guaranteed stock and shares of the company created or to be created :
- (8.) In each year after all holders of preferred ordinary stock for the time being issued have received in full the maximum dividend aforesaid, all holders of deferred ordinary stock for the time being issued shall, in respect of all dividend exceeding that maximum paid by the company in that year on ordinary stock and shares, rank *pari passu* with the holders of undivided ordinary stock and of ordinary shares of the company for the time being issued :
- (9.) If, nevertheless, in any year ending on the thirty-first day of December there are not profits available for payment to all the holders of preferred ordinary stock of the maximum dividend aforesaid, no part of the deficiency shall be made good out of the profits of any subsequent year, or out of any other funds of the company :
- (10.) Preferred ordinary stock and deferred ordinary stock from time to time shall confer such right of voting at meetings of the company, and shall confer and have all such other rights, qualifications, privileges, liabilities, and incidents, as from time to time attach and are incident to undivided ordinary stock of the company :
- (11.) The terms and conditions on which any preferred ordinary stock or deferred ordinary stock is issued shall be stated on the certificate thereof :
- (12.) Preferred ordinary stock and deferred ordinary stock shall respectively be held on the same trusts, and subject to the same charges and liabilities, as those on and subject to which the ordinary stock in substitution for which the same are issued was held

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immediately before the substitution, and so as to give effect to any testamentary or other disposition of or affecting such ordinary stock.

(a) As to the issue of preference stock, see *ante*, pp. 109-111.

II.—OBLIGATIONS AND LIABILITY OF COMPANIES AS CARRIERS.

Liability of company during sea transit.

XIV. Where a company by through booking contracts to carry any animals, luggage, or goods from place to place partly by railway and partly by sea, or partly by canal and partly by sea, a condition exempting the company from liability for any loss or damage which may arise during the carriage of such animals, luggage, or goods by sea from the act of God, the king's enemies, fire, accidents from machinery, boilers, and steam, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever, shall, if published in a conspicuous manner in the office where such through booking is effected, and if printed in a legible manner on the receipt or freight note which the company gives for such animals, luggage, or goods, be valid as part of the contract between the consignor of such animals, luggage, or goods, and the company in the same manner as if the company had signed and delivered to the consignor a bill of lading containing such condition. For the purposes of this section the word "company" includes the owners, lessees, or managers of any canal or other inland navigation.

Fares to be posted in stations

XV. On and after the first day of January one thousand eight hundred and sixty-nine every company shall cause to be exhibited (a) in a conspicuous place in the booking-office of each station on their line a list or lists painted, printed, or written in legible characters, containing the fares of passengers by the trains included in the time-tables of the company from that station to every place for which passenger tickets are there issued.

(a) See s. 93 of the Railway Clauses Act, 1845, *ante*, p. 427.

Provision for securing equality of treatment where railway company works steam vessels.

XVI. Where a company is authorised to build, or buy, or hire, and to use, maintain, and work, or to enter into arrangements for using, maintaining, or working steam

vessels for the purpose of carrying on a communication between any towns or ports, and to take tolls in respect of such steam vessels, then and in every such case tolls shall be at all times charged to all persons equally and after the same rate in respect of passengers conveyed in a like vessel passing between the same places under like circumstances; and no reduction or advance in the tolls shall be made in favour of or against any person using the steam vessels in consequence of his having travelled or being about to travel on the whole or any part of the company's railway, or not having travelled, or not being about to travel on any part thereof, or in favour of or against any person using the railway in consequence of his having used or being about to use, or his not having used or not being about to use, the steam vessels; and where an aggregate sum is charged by the company for conveyance of a passenger by a steam vessel and on the railway, the ticket shall have the amount of toll charged for conveyance by the steam vessel distinguished from the amount charged for conveyance on the railway.

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The provisions of the Railway and Canal Traffic Act, 1854, so far as the same are applicable, shall extend to the steam vessels and to the traffic carried on thereby.

XVII. Where any charge shall have been made by a company in respect of the conveyance of goods over their railway, on application in writing within one week after payment of the said charge made to the secretary of the company by the person by whom or on whose account the same has been paid, the company shall within fourteen days render an account to the person so applying, for the same, distinguishing how much of the said charge is for the conveyance of the said goods on the railway, including therein tolls for the use of the railway, for the use of carriages, and for locomotive power, and how much of such charge is for loading and unloading, covering, collection, delivery, and for other expenses, but without particularising the several items of which the last-mentioned portion of the charge may consist.

Company bound
to furnish particulars of
charges for
goods.

XVIII. Where two railways are worked by one company, then in the calculation of tolls and charges for any distances in respect of traffic (whether passengers, animals,

Charge when two
railways worked
by one company.

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goods, carriages, or vehicles) conveyed on both railways, the distances traversed shall be reckoned continuously on such railways as if they were one railway.

Proceedings in
case of non con-
sumption of
smoke.

XIX. Where proceedings are taken against a company using a locomotive steam engine on a railway on account of the same not consuming its own smoke, then if it appears to the justices before whom the complaint is heard that the engine is constructed on the principle of consuming its own smoke, but that it failed to consume its own smoke, as far as practicable, at the time charged in the complaint, through the default of the company, or of any servant in the employment of the company, such company shall be deemed guilty of an offence under the Railways Clauses Consolidation Act, 1845, s. 114 (a).

(a) *Ante*, p. 444.

Smoking com-
partments for all
classes.

XX. All railway companies, except the Metropolitan Railway Company, shall, from and after the first day of October next, in every passenger train where there are more carriages than one of each class, provide smoking compartments for each class of passengers, unless exempted by the Board of Trade (a.)

(a) See the bye-laws issued by the Board of Trade with regard to smoking compartments, in the Appendix, *post*.

Railway com-
panies to be
liable to penal-
ties in case they
shall provide
trains for prize
fights.

XXI. Any railway company that shall knowingly let for hire or otherwise provide any special train for the purpose of conveying parties to or to be present at any prize fight, or who shall stop any ordinary train to convenience or accommodate any parties attending a prize fight at any place not an ordinary station on their line, shall be liable to a penalty, to be recovered in a summary way before two justices of the county in which such prize fight shall be held or shall be attempted to be held, of such sum not exceeding five hundred pounds, and not less than two hundred pounds, as such justices shall determine, one-half of such penalty to be paid to the party at whose suit the summons shall be issued, and the other half to be paid to the treasurer of the county in which such prize fight shall be held or shall be attempted to be held, in aid of the county rate; and service of the summons under

which the penalty is sought to be enforced on the secretary of the company at his office ten days before the day of hearing shall be sufficient to give the justices before whom the case shall come jurisdiction to hear and determine the case.

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III.—PROVISIONS FOR SAFETY OF PASSENGERS.

XXII. After the first day of April one thousand eight hundred and sixty-nine, every company shall provide and maintain in good working order, in every train worked by it which carries passengers, and travels more than twenty miles without stopping, such efficient means of communication between the passengers and the servants of the company in charge of the train as the Board of Trade may approve. If any company makes default in complying with this section, it shall be liable to a penalty not exceeding ten pounds for each case of default. Any passenger who makes use of the said means of communication without reasonable and sufficient cause shall be liable for each offence to a penalty not exceeding five pounds.

Communication
between passen-
gers and the com-
pany's servants.

XXIII. If any person shall be or pass upon any railway, except for the purpose of crossing the same at any authorised crossing, after having received warning by the company which works such railway, or by any of their agents or servants, not to go or pass thereon, every person so offending shall forfeit and pay any sum not exceeding forty shillings for every such offence.

Penalty for tres-
passes on rail-
ways.

XXIV. If any tree standing near to a railway shall be in danger of falling on the railway so as to obstruct the traffic, it shall be lawful for any two justices, on the complaint of the company which works such railway, to cause such tree to be removed or otherwise dealt with as such justices may order, and the justices making such order may award compensation to be paid by the company making such complaint to the owner of the tree so ordered to be removed or otherwise dealt with as such justices shall think proper, and the amount of such compensation shall be recoverable in like manner as compensation recoverable before justices under "The Railways Clauses Consolidation Act, 1845."

Trees dangerous
to railways may
be removed.

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IV.—COMPENSATION FOR ACCIDENTS.

Arbitration of
damages.

XXV. Where a person has been injured or killed by an accident on a railway, the Board of Trade, upon application in writing made jointly by the company from whom compensation is claimed and the person, if he is injured, or his representatives, if he is killed (*a*), may, if they think fit, appoint an arbitrator, who shall determine the compensation (if any) to be paid by the company.

(*a*) See the provisions of Lord Campbell's Act, and of the act amending the same, in the Appendix, *post*; and see as to the decided cases on this subject, *ante*, pp. 405-409.

Examination by
medical man.

XXVI. Whenever any person injured by an accident on a railway claims compensation on account of the injury, any judge of the court in which proceedings to recover such compensation are taken, or any person who by the consent of the parties or otherwise has power to fix the amount of compensation, may order that the person injured be examined by some duly qualified medical practitioner named in the order, and not being a witness on either side, and may make such order with respect to the costs of such examination as he may think fit.

V.—LIGHT RAILWAYS.

Order for construction and
working of railway as a light
railway.

XXVII. The Board of Trade may by license authorise a company applying for it to construct and work, or to work as a light railway, the whole or any part of a railway which the company has power to construct or work.

Before granting the license the Board of Trade shall cause due notice of the application to be given, and shall consider all objections and representations received by them, and shall make such inquiry as they think necessary.

Conditions and
regulations for
light railway.

XXVIII. A light railway shall be constructed and worked subject to such conditions and regulations as the Board of Trade may from time to time impose or make: Provided, that (1.) the regulations respecting the weight of locomotive engines, carriages, and vehicles to be used on such railway shall not authorise a greater weight than eight tons to be brought upon the rails by any one pair of wheels; (2.) the regulations respecting the speed of trains

shall not authorise a rate of speed exceeding at any time twenty-five miles an hour. 31 & 32 Vict. c. 119.

If the company or any person fails to comply with or acts in contravention of such conditions and regulations, or directs any one so to fail or act, such company and person shall respectively be liable to a penalty for each offence not exceeding twenty pounds, and to a like penalty for every day during which the offence continues; and every such person on conviction on indictment for any offence relating to the weight of engines, carriages, or vehicles, or the speed of trains, shall be also liable to imprisonment, with or without hard labour, for any term not exceeding two years.

XXIX. The conditions and regulations of the Board of Trade relating to light railways shall be published and kept published by the company in manner directed with respect to bye-laws by s. 110 of the "Railways Clauses Consolidation Act, 1845" (a), and the company shall be liable to a penalty not exceeding five pounds for every day during which such conditions and regulations are not so published. Publication of regulations.

(a) *Ante*, p. 440.

VI.—ARBITRATIONS BY BOARD OF TRADE.

XXX. Whenever the Board of Trade are required to make any award or to decide any difference in any case in which a company is one of the parties, they may appoint an arbitrator to act for them, and his award or decision shall be deemed to be the award or decision of the Board of Trade. Arbitrator appointed by Board of Trade.

If the arbitrator dies, or in the judgment of the Board of Trade becomes incapable or unfit, the Board of Trade may appoint another arbitrator.

XXXI. The Board of Trade may fix the remuneration of any arbitrator or umpire appointed by them in pursuance of this or any other act in any case where a company is one of the parties, and may, if they think fit, frame a scale of remuneration for arbitrators or umpires so appointed by them, and no arbitrator or umpire so appointed by them shall be entitled to any larger remuneration than the amount fixed by the Board of Trade. Remuneration of arbitrator.

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Cost, &c., of
arbitrations.

XXXII. The provisions of ss. 18 to 29, both inclusive, of the Railway Companies Arbitration Act, 1859 (*a*), shall, so far as is consistent with the tenor thereof, apply to an arbitrator appointed by the Board of Trade, and to his arbitration and award, notwithstanding that one of the parties between whom he is appointed to arbitrate may not be a railway company; and in construing those sections for the purpose of this act the word "companies" shall be construed to mean the parties to the arbitration.

(*a*) See this act (22 & 23 Vict. c. 59) in the Appendix, *post*.

Costs, charges,
&c., to be taxed
and settled by
masters of the
Court of Queen's
Bench.

XXXIII. All disputed questions as to any costs, charges, and expenses of and incident to any arbitration or award made under the provisions of "The Lands Clauses Consolidation Act, 1845" (*a*), or of any special act of Parliament incorporating the same, whether the question in dispute arise as to compensation to be made for lands required to be purchased and actually taken by any railway company, or in respect of the injurious affecting of other lands not taken, or otherwise in relation thereto, shall, if either party so requires, be taxed and settled as between the parties by one of the masters of the Court of Queen's Bench; and it shall be lawful for such master to receive and take in respect of each folio in length of every bill of costs so settled a fee of one shilling and no more, and such fee shall be taken in money and not in stamps, and may be retained by the said master for his own use and benefit.

(*a*) See s. 172, *ante*, p. 172.

VII.—MISCELLANEOUS.

Printed copies
of shareholders'
address book.

XXXIV. Every incorporated company shall print correct copies of the shareholders' address book (*a*) of the company, corrected up to the first day of December in every year, and affix an asterisk against the names of those qualified to act as directors.

After the expiration of one fortnight from the aforesaid date the company shall, on application, supply such printed copies at a price not exceeding five shillings for each copy to every person who holds any ordinary or preference shares or stock in the company, or any mortgage debenture or debenture stock of the company.

Any company which acts in contravention of this section shall be liable for each offence to a penalty not exceeding twenty pounds.

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(a) See s. 10 of the Companies Clauses Act, 1845, p. 8, *ante*.

XXXV. When a bill is introduced into either House of Parliament conferring on an incorporated company additional powers, or when an incorporated company applies to the Board of Trade for a certificate conferring on it additional powers, the following provisions shall have effect; namely,

Meeting preliminary to application for act or certificate.

1. Before the bill is read a second time in the House of Parliament into which it is first introduced, or before the application is made to the Board of Trade, (as the case may be,) the bill or draft certificate (as the case may be) shall be submitted to a meeting of the proprietors of such company at a meeting held specially for that purpose:
2. Such meeting shall be called by advertisement inserted once in each of two consecutive weeks in a morning newspaper published in London, Edinburgh, or Dublin, as the case may be, and in a newspaper of the county or counties in which the principal office or offices of the company is or are situate, and also by a circular addressed to each proprietor at his registered or last known or usual address, and sent by post or delivered at such address not less than ten days before the holding of such meeting, inclosing a blank form of proxy, with proper instructions for the use of the same; and the same form of proxy and the same instructions shall be sent to every such proprietor, and shall be addressed to each proprietor on the back of the form of proxy; but no such form of proxy shall be stamped before it is sent out, nor shall the funds of the company be used for the stamping of any proxies, nor shall any intimation be sent as to any person to whom the proxy may be given or addressed; and no other circular or form of proxy relating to such meeting shall be sent to any proprietor from the office of the company, or by any director or officer of the company so describing himself:
3. Such meeting shall be held on a day not earlier than seven days after the last insertion of such advertise-

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c. 119.

ment, and may be held on the same day as an ordinary general meeting of the company :

4. At such meeting the bill or draft certificate shall be submitted to the proprietors, and shall not be proceeded with unless approved of by proprietors present in person or by proxy, holding at least three-fourths of the paid-up capital of the company represented at such meeting, such proprietors being qualified to vote at all ordinary meetings of the company in right of such capital ; the votes of proprietors of any paid-up shares or stock, other than debenture stock, not qualified to vote at ordinary meetings, whose interests may be affected by the proposed act or certificate, if tendered at the meeting, shall be recorded separately :
5. There shall be laid before Parliament or the Board of Trade (as the case may require) a statement of the number of votes if a poll was taken, and the number of votes recorded separately.

Special trains
exclusively for
post-office.

XXXVI. Whenever in pursuance of any notice under the act of the session of the first and second years of the reign of her present Majesty, chapter ninety-eight, "to provide for the conveyance of mails by railways" (a), or otherwise, the mails or post letter-bags are conveyed and forwarded by a company on their railway by a special train, the Postmaster-General may by the same or any other notice in writing require that the whole of such special train shall be appropriated to the service of the post-office exclusively of all other traffic except such as he may sanction, and the remuneration to be paid for such service shall be settled as prescribed by the sixth section of that act.

(a) See Appendix, pp. v. vi. and viii.

Service of re-
quisitions, &c.
by Postmaster
General.

XXXVII. All requisitions, notices, and documents which relate to a company, if purporting to be signed by the Postmaster-General or some Secretary or Assistant-Secretary to the Post Office, or by some officer appointed for the purpose by the Postmaster-General, shall, until the contrary is proved, be deemed to have been so signed, and to have been given or made by the Postmaster-General, and the provisions of the act of the session of the first and second years of the reign of her present Majesty, chapter

Amendment of Railway Companies' Powers Act. 533

ninety-eight, "to provide for the conveyance of mails by railways" (a), requiring any notice, requisition, or document to be under the hand of the Postmaster-General, are hereby repealed.

31 & 32 Vict.
c. 119.

(a) See Appendix, p. v.

XXXVIII. The Railway Companies' Powers Act, 1864 (a), shall take effect and apply in the following cases in the same manner as if they were specified in section three of that act; (that is to say,)

Extension of
scope of Railway
Companies'
Powers Act,
1864.

Where a company desire to make new provisions, or to alter any of the provisions of this special act, or of the "Companies Clauses Consolidation Act, 1845," so far as it is incorporated therewith, with respect to all or any of the matters following; namely,

- (a.) The general meetings of the company, and the exercise of the right of voting by the shareholders (b):
- (b.) The appointment, number, and rotation of directors (c):
- (c.) The powers of directors (d):
- (d.) The proceedings and liabilities of directors (e):
- (e.) The appointment and duties of auditors (f).

(a) See this act (27 & 28 Vict. c. 120) in the Appendix.

(b) See ss. 66-80 of the Companies Clauses Act, 1845, *ante*, pp. Voting. 63-67.

(c) See ss. 81-89 of the Companies Clauses Act, 1845, *ante*, pp. Directors. 67-71.

(d) See ss. 90 and 91 of the Companies Clauses Act, 1845, *ante*, pp. 71 and 87.

(e) See ss. 92-100 of the Companies Clauses Act, 1845, *ante*, pp. 87-101.

(f) See ss. 101-108 of the Companies Clauses Act, 1845, *ante*, pp. Auditors. 101, 102.

The effect of this section is to enable railway companies by obtaining a certificate from the Board of Trade to make such alterations as they may require in the case mentioned.

XXXIX. All requisitions, orders, regulations, appointments, certificates, licenses, notices, and documents which relate to a company, if purporting to be signed by some secretary or assistant-secretary of or by some officer appointed for the purpose by the Board of Trade, shall, until the contrary is proved, be deemed to have been so signed, and to have been given or made by the Board of Trade.

Service of requisitionists, &c.

31 & 32 Vict.
c. 119.

shareholders, at the cost of the company, such statement respecting the grounds on which he differs from his colleagues, and respecting the financial condition and prospects of the company, as he thinks material for the information of the shareholders.

(a) *Ante*, p. 511.

Issue of preferred
and deferred
ordinary stock.

XIII. Any company which in the year immediately preceding has paid a dividend on their ordinary stock of not less than three pounds per centum per annum may, pursuant to the resolution of an extraordinary general meeting, divide their paid-up ordinary stock into two classes, to be and to be called the one preferred ordinary stock, and the other deferred ordinary stock (a), and issue the same subject and according to the following provisions, and with the following consequences; (that is to say,)

- (1.) Preferred and deferred ordinary stock shall be issued only in substitution for equal amounts of paid-up ordinary stock, and by way of division of portions of ordinary stock into two equal parts:
- (2.) Such division may be made at any time, on the request in writing of the holder of paid-up ordinary stock, but not otherwise; and such request may apply to the whole of the ordinary stock of such holder, or to any portion thereof divisible into twentieth parts:
- (3.) Preferred ordinary stock and deferred ordinary stock shall not be issued except in sums of ten pounds or multiples of ten pounds:
- (4.) The certificates for any ordinary stock divided into preferred and deferred ordinary stock shall before such division be delivered up to the company, and shall be cancelled by them, and certificates for preferred ordinary stock and deferred ordinary stock shall be issued *gratis* in exchange by the company:
- (5.) If in any case there is any part of the ordinary stock held by a stockholder comprised in one certificate which he does not desire to be divided, or which is incapable of division, under the provisions of this act, the company shall issue to him *gratis* a certificate for that amount as ordinary stock:
- (6.) As between preferred ordinary stock and deferred ordinary stock, preferred ordinary stock shall bear a

for injury done or to be done to lands held therewith, deliver their verdict separately in manner provided by the forty-ninth section of "The Lands Clauses Consolidation Act, 1845" (b). 31 & 32 Vict.
c. 119.

(a) See s. 23 of the Lands Clauses Act, 1845, *ante*, p. 164.

(b) *Ante*, p. 181.

XLII. Whenever a company is called upon or liable under the provisions of "The Lands Clauses Consolidation Act, 1845," to issue their warrant to the sheriff (a) in the case of any disputed compensation, and the company shall obtain a judge's order as in the last preceding section mentioned, the obtaining of such an order and notice thereof to the opposite party shall be a satisfaction of the company's duty in respect of the issue of the warrant. Company may
obtain judge's
order instead of
issuing warrant

(a) See s. 38 of the Lands Clauses Act, 1845, *ante*, p. 175.

XLIII. The verdict of the jury and judgment of the Court upon any issue authorised by this act shall, as regards costs and every other matter incident to or consequent thereon, have the same operation and be entitled to the same effect as if that verdict and judgment had been the verdict of a jury and judgment of a sheriff upon an inquiry conducted upon a warrant to the sheriff issued by the company under "The Lands Clauses Consolidation Act, 1845" (a). Power of verdict
of jury and judg-
ment of the
Court.

(a) See s. 49 of the Lands Clauses Act, 1845, *ante*, p. 181.

XLIV. In so far as any expression used in any of the three preceding sections of this act has any special meaning assigned to it by "The Lands Clauses Consolidation Act, 1845," each such expression shall in this act have the meaning so assigned to it. Interpretation of
certain expres-
sions.

XLV. Wherever under the provisions of the Lands Clauses Consolidation Act, 1845 (a), or of any act incorporating, altering, or amending the same, the costs of any proceedings for determining a question of disputed compensation are settled by one of the masters of the Court of Queen's Bench in *England* or *Ireland*, it shall be lawful for such masters to receive and take in respect of each folio in length of every bill of costs so settled a fee of one Fees to masters
for determining
questions of dis-
puted compensa-
tion.

& 32 Vict
c. 119.

shilling and no more; and such fee shall be taken in money and not in stamps, and may be retained by the said masters for their own use and benefit.

(a) S. 52, *ante*, p. 185.

Extension of
time.

XLVI. Where notice in writing of a proposed application under "The Railways (Extension of Time) Act, 1868" (a), for extension of the time limited for any of the purposes mentioned in that act, is received by the Board of Trade before the expiration of such time, or if the time has expired during the present session of Parliament before the first day of September one thousand eight hundred and sixty-eight, and the application is duly made within the period prescribed by the said act, then a warrant of the Board of Trade extending the time, although issued after the expiration thereof, shall have effect from the date of such expiration as if it had been previously issued.

(a) See this act (31 & 32 Vict. c. 18) in the Appendix, *post*.

As to repeal of
enactments in
second schedule.

XLVII. The enactments described in the second schedule to this act are hereby repealed.

But this repeal shall not affect—

- (1.) The validity or invalidity of anything duly done or suffered under any enactment repealed by this section :
- (2.) Any right acquired or accrued, or liability incurred, or any remedy in respect thereof.

SCHEDULES.

FIRST SCHEDULE.

FORMS OF ACCOUNT referred to in Sec. 3 of this Act, *ante*, p. 516.

18

RAILWAY.

HALF-YEAR ENDING

STATEMENT OF CAPITAL AUTHORISED, AND CREATED BY THE COMPANY.

[No. 1.]

ACTS OF PARLIAMENT, or Certificates of the Board of Trade.	CAPITAL AUTHORISED.			CAPITAL CREATED OR SANCTIONED.			BALANCE.		
	Stock and Shares.	Loans.	Total.	Stock and Shares.	Loans.	Total.	Stock and Shares.	Loans.	Total.
1. £	£	£	£	£	£	£	£	£	£
2. {									
3. {									
4. {									
5. {									
&c.									
TOTAL, . . .									

1. {
2. {
3. {
4. {
5. {
&c.

[Except where Capital Powers are
comprised in a Consolidation Act,
each Act or Certificate authoris-
ing Capital to be stated here sep-
arately in order of Date.]

[No. 2.] STATEMENT OF STOCK AND SHARE CAPITAL CREATED, SHOWING THE PROPORTION RECEIVED.

Description.	Amount Created.	Amount Received.	Calls in Arrear.	Amount Uncalled.	Amount Unissued.
<p>[State each Class of Stock or Shares in order of Date of Creation, showing the Premium or Discount, if any, at which it was issued, the Preferential or fixed Dividends, if any, to which it is entitled, and any other Conditions attached to it.]</p>	£	£	£.	£	£
TOTAL,					

RECEIPTS AND EXPENDITURE ON CAPITAL ACCOUNT.

No. 4.] Dr.

Cr.

	Amount Expended to	Amount Expended during Half-year	Total.		Amount Received to	Amount Received during Half-year	Total.
	£ s. d.	£ s. d.	£ s. d.		£ s. d.	£ s. d.	£ s. d.
To Expenditure— On Lines open for Traffic, (No. 5.)				By Receipts— Shares and Stock, per Account No. 2,			
On Lines in course of Construc- tion, (No. 5.)				Loans, per Account No 3,			
Working Stock, (No. 5.)				Debenture Stock, per Account No. 3,			
Subscriptions to other Railways, (No. 5.)				Sundries, (in detail,)			
Docks, Steamboats, and other special Items, (No. 5.)							
To Balance,							

Lines open for Traffic— Particulars—						
Lines in course of Construction— Particulars—						
Working Stock— Particulars—						
Subscriptions to other Railways— Particulars—						
Docks, Steamboats, and other special Items— Particulars,						
Total Expenditure for Half-year, as per Account No. 4						

	FURTHER EXPENDITURE.		
	During the Half-year ending	In subsequent Half-years.	Total.
Lines open for Traffic, (<i>Particulars, showing Principal Items.</i>)	.		
Lines in course of Construction, (<i>Details of each Line.</i>)	.		
Working Stock, (<i>Particulars.</i>)	.		
Subscription to other Railways, (<i>Specifying Lines.</i>)	.		
Docks, Steamboats, and other special Items, (<i>Particulars.</i>)	.		
Works not yet commenced, and in abeyance, (<i>in detail</i>),	.		
Other Items, (<i>in detail</i>),		
Total Estimated further Expenditure of Capital,	.		

[No. 8.] CAPITAL POWERS AND OTHER ASSETS AVAILABLE TO MEET FURTHER EXPENDITURE,
AS PER No. 7.

Share and Loan Capital authorised or created, but not yet received,	.	.	.
Any other Assets, (in detail)	.	.	.
Total,	.	.	.

Cr.

REVENUE ACCOUNT.

[No. 9.] Dr.

Half-year ended	EXPENDITURE.	£ s. d.	Half-year ended	RECEIPTS.	£ s. d.	£ s. d.
	To Maintenance of Way, { see Abstract A. Work, and Stations, {			By Passengers,		
	" Locomotive Power, . . do. B.			" Parcels, Horses, Carriages, &c.,		
	" Carriage and Waggon { Repairs, do. C.			" Mails,		
	" Traffic Expenses, . . . do. D.			" Merchandise,		
	" General Charges, . . . do. E.			" Live Stock,		
	" Law Charges,			" Minerals,		
	" Parliamentary Expenses,			Special and Miscellaneous Receipts—		
	" Compensation, (Accidents and Losses,) .			Such as Navigations, Steamboats,		
	" Rates and Taxes,			Rents, Transfer Fees, &c.		
	" Government Duty,			Details.		
	" Special and Miscellaneous Expenses, (if any,)					
	" Balance carried to Net Revenue Account,					

Cr.

NET REVENUE ACCOUNT.

[No. 10.] Dr.

Half-year ended	EXPENDITURE.	£ s. d.	Half-year ended	RECEIPTS.	£ s. d.
	To Interest on Mortgage and Debenture Loans, " Interest on Debenture Stock, " Interest on Calls in Advance, " Interest on Temporary Loans, " Interest on Lloyd's Bonds, " Interest on Banking Balances, " General Interest Account, (if in Debit,) " Rents of Leased Lines, Guarantees, &c., Details, " Special and Miscellaneous Payments, (if any,) <i>Details.</i> Balance, being Payment available for Dividend, [See No. 13.]			By Balance brought from last Half-year's Account, " Ditto Revenue Account, No. 9, " Dividends on Shares in other Companies, " Bankers and General Interest Account, (if in Credit,) " Special and Miscellaneous Receipts, (if any,) (Detail to be given.)	

[No. 11.] PROPOSED APPROPRIATION OF BALANCE AVAILABLE FOR DIVIDEND.

Half-year ended	Balance available for Dividend, as per Account No. 10,	£
	Preference Stock	£
	Ditto	
	Ditto	
	Ordinary Stock, (being at the Rate of per cent.,)	
	Balance to next Half-year,	£

Cr.

GENERAL BALANCE-SHEET.

[No. 13.] Dr.

£	s.	d.	£	s.	d.
To Capital Account, Balance at Credit thereof, as per Account No. 4,			By Cash at Bankers—Current Account,		
" Net Revenue Account, Balance at Credit thereof, as per Account No. 10,			" Cash on Deposit at Interest,		
" Unpaid Dividends and Interest,			" Cash invested in Consols and Government Securities,		
" Guaranteed Dividends and Interest payable or accruing and provided for,			" Cash invested in Shares of other Railway Companies not charged as Capital Expenditure,		
" Temporary Loans,			" General Stores—Stock of Materials on hand,		
" Lloyd's Bonds and other Obligations not included in Loan Capital Statement No. 3,			" Traffic Accounts due to the Company,		
" Balance due to Bankers,			" Amounts due by other Companies,		
" Debts due to other Companies,			" Do. do. Clearing House,		
" Amount due to Clearing House,			" Do. do. Post-Office,		
" Sundry Outstanding Accounts,			" Sundry Outstanding Accounts,		
" Fire Insurance Fund on Stations, Works, and Buildings,			" Suspense Accounts (if any) to be enumerated,		
" Insurance Fund on Steamboats,			" Special Items,		
" Special Items,					

MILEAGE STATEMENT.

[No. 14.]

Half-year ended		Miles authorised.	Miles constructed.	Miles constructing or to be constructed.	Miles worked by Engines.
	Lines owned by Company,				
	Do. partly owned,				
	Do. leased or rented,				
	TOTAL,				
	Do. worked,				
	Foreign Lines worked over,				
	TOTAL,				

[No. 15.]

STATEMENT OF TRAIN MILEAGE.

Half-year ended		
	Passenger Trains,	.
	Goods and Mineral Trains,	.
	TOTAL,	.

(Signed) _____ Chairman or Deputy Chairman of Company.
 _____ Secretary or Accountant of Company.

CERTIFICATE RESPECTING THE PERMANENT WAY, &c.

I hereby certify that the whole of the Company's Permanent Way, Stations, Buildings, Canals, and other Works have during the past Half-Year been maintained in good working Condition and Repair.

Date _____ 18 .

Engineer.

CERTIFICATE RESPECTING THE ROLLING STOCK.

I hereby certify that the whole of the Company's Plant, Engines, Tenders, Carriages, Waggons, Machinery, and Tools, also the Marine Engines of the Steam Vessels, have during the past Half-Year been maintained in good working Order and Repair.

Chief Engineer, or

Locomotive Superintendent.

At _____ 18 .

AUDITOR'S CERTIFICATE.

As prescribed by Act 30 and 31 Victoria, Cap. 37, to follow.

SECOND SCHEDULE.

Date and Chapter of Act.	Title of Act.
3 & 4 Vict. c. 97, (in part.)	An Act for regulating Railways in part; namely,— Section Twenty.
5 & 6 Vict. c. 55, (in part.)	An Act for the better Regulation of Railways, and for the Con- } veyance of Troops in part; namely,— Section Nineteen.
7 & 8 Vict. c. 85, (in part.)	An Act to attach certain conditions to the Construction of future } Railways authorised or to be authorised by any Act of the pre- } sent or succeeding Sessions of Parliament, and for other Pur- } poses in relation to Railways in part; namely,— Section Twenty-three.

APPENDIX.

APPENDIX.

7 WILL. IV. & 1 VICT. c. 83.*

An Act to compel Clerks of the Peace for Counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders (a) of either House of Parliament.—[17th July 1837.]

WHEREAS the Houses of Parliament are in the habit of requiring that, previous to the introduction of any bill into Parliament for making certain bridges, turnpike roads, cuts, canals, reservoirs, aqueducts, waterworks, navigations, tunnels, archways, railways, piers, ports, harbours, ferries, docks, and other works, to be made under the authority of Parliament, certain maps or plans and sections, and books and writings, or extracts or copies of or from certain maps, plans, or sections, books and writings, shall be deposited in the office of the Clerk of the Peace for every county, riding, or division in *England* or *Ireland*, or in the office of the sheriff-clerk of every county in *Scotland*, in which such work is proposed to be made, and also with the parish clerk of every parish in *England*, the schoolmaster of every parish of *Scotland*, or in royal burghs with the town-clerk, and the postmaster of the post town in or nearest to every parish in *Ireland*, in which such work is intended to be made, and with other persons (b): and whereas it is expedient that such maps, plans, sections, books, writings, and copies or extracts of and from the same, should be received by the said clerks of the peace, sheriff-clerks, parish-clerks, schoolmasters, town-clerks, postmasters, and other persons, and should remain in their custody for the purposes hereinafter mentioned: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal,

* This act is made applicable to deposits of documents under the Railway Companies Powers Act, 1864, (27 & 28 Vict. c. 120, s. 34,) and under the Railways Construction Facilities Act, 1864, (27 & 28 Vict. c. 121, s. 63,) *post*.

7 WILL. IV. &
1 VICT. c. 83.

Clerks of the
peace, &c., to re-
ceive the docu-
ments herein
mentioned, and
retain them for
the purposes di-
rected by the
standing orders
of the Houses of
Parliament.

and Commons, in this present Parliament assembled, and by the authority of the same, that whenever either of the Houses of Parliament shall by its standing orders, already made or hereafter to be made, require that any such maps, plans, sections, books, or writings, or extracts or copies of the same, or any of them, shall be deposited as aforesaid, such maps, plans, sections, books, writings, copies, and extracts shall be received by and shall remain with the clerks of the peace, sheriff-clerks, parish-clerks, schoolmasters, town-clerks, postmasters, and other persons (b) with whom the same shall be directed by such standing orders to be deposited, and they are hereby respectively directed to receive and to retain the custody of all such documents and writings so directed to be deposited with them respectively, in the manner, and for the purposes, and under the rules and regulations concerning the same respectively directed by such standing orders, and shall make such memorials and endorsements on and give such acknowledgments and receipts in respect of the same respectively as shall be thereby directed.

Deposits in Board
of Trade and
Parliament
Office.

(a) C. S. O. 30-32; L. S. O. clxxxii., *post*.

(b) The provisions with respect to deposits with "other persons," *e.g.*, the Board of Trade, and in the Parliament Office, will be found in the standing orders referred to in note (a).

Clerks of the
peace, &c., to
permitsuch docu-
ments to be in-
spected or copied
by persons in-
terested.

II. And be it further enacted, That all persons interested shall have liberty to, and the said clerks of the peace, sheriff-clerks, parish-clerks, schoolmasters, town-clerks, and postmasters, and every of them, are and is hereby required, at all reasonable hours of the day, to permit all persons interested to inspect during a reasonable time, and make extracts from or copies of the said maps, plans, sections, books, writings, extracts and copies of or from the same, so deposited with them respectively, on payment by each person to the clerk of the peace, sheriff-clerk, clerk of the parish, schoolmaster, town-clerk, or postmaster having the custody of any such map, plan, section, book, writing, extract, or copy, one shilling for every such inspection, and the further sum of one shilling for every hour during which such inspection shall continue after the first hour, and after the rate of sixpence for every one hundred words copied therefrom.

Clerks of the
peace, &c., for
every omission to
comply with the
provisions of
this act, liable to
the penalty of £5,
to be recovered
in a summary
way.

III. And be it further enacted, That in case any clerk of the peace, sheriff-clerk, parish-clerk, schoolmaster, town-clerk, postmaster, or other person, shall in any matter or thing refuse or neglect to comply with any of the provisions hereinbefore contained, every clerk of the peace, sheriff-clerk, parish-clerk, schoolmaster, town-clerk, postmaster, or other person, shall for every such offence forfeit and pay any sum not exceeding the

Deposit of Documents—Conveyance of Mails. v

sum of five pounds; and every such penalty shall, upon proof of the offence before any justice of the peace for the county within which such offence shall be committed, or by the confession of the party offending, or by the oath of any credible witness, be levied and recovered, together with the costs of the proceedings for the recovery thereof, by distress and sale of the goods and effects of the party offending, by warrant under the hand of such justice, which warrant such justice is hereby empowered to grant, and shall be paid to the person or persons making such complaint; and it shall be lawful for any such justice of the peace to whom any complaint shall be made of any offence committed against this act to summon the party complained of before him, and on such summons to hear and determine the matter of such complaint in a summary way, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing or in print shall have been exhibited or taken by or before such justice; and all such proceedings by summons without information shall be as good, valid, and effectual to all intents and purposes as if an information in writing had been exhibited.

7 WILL. IV. &
1 VICT. c. 83.

1 & 2 VICT. c. 98.

*An Act to provide for the Conveyance of the Mails by Railways.**
—[14th August 1838.]

WHEREAS it is expedient that provision should be made by law for the conveyance of the mails by railways† at a reasonable rate of charge to the public: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in all cases of railways already made or in progress or to be hereafter made within the United Kingdom, by which passengers or goods shall be conveyed in or upon carriages drawn or impelled by the power of steam, or by any locomotive or stationary engines, or animal or other power whatever, it shall be lawful for the Postmaster-General, by notice in writing

Postmaster-General may require railway companies to convey the mails.

* The act has been amended by s. 11 of 7 & 8 Vict. c. 83, *post*.

† And tramways in Ireland: 23 & 24 Vict. c. 152 (*Tramways (Ireland) Act, 1860*) Schedule (C).

1 & 2 VICT. c. 98. under his hand delivered to the company of proprietors of any such railway, to require that the mails or post letter bags shall, from and after the day to be named in any such notice (being not less than twenty-eight days from the delivery thereof) be conveyed and forwarded by such company on their railway, either by the ordinary trains of carriages, or by special trains (a), as need may be, at such hours or times in the day or night as the Postmaster-General shall direct, together with the guards (b), appointed and employed by the Postmaster-General in charge thereof, and any other officers of the Post-office; and thereupon the said company shall, from and after the day to be named in such notice, at their own costs, provide sufficient carriages and engines on such railways for the conveyance of such mails and post letter bags to the satisfaction of the Postmaster-General, and receive, take up, carry, and convey by such ordinary or special trains (a) of carriages or otherwise, as need may be, all such mails or post letter bags as shall for that purpose be tendered to them, or any of their officers, servants, or agents, by any officer of the Post-office, and also receive, take up, carry, and convey, in and upon the carriages carrying such mails or post letter bags, the guards in charge thereof, and any other officers of the Post-office, and shall receive, take up, deliver, and leave such mails or post letter bags, guards, and officers at such places on the line of such railway, on such days, at such hours or times in the day or night, and subject to all such reasonable regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, and times of arrival, as the Postmaster-General shall in that behalf from time to time order or direct: Provided always, that the rate of speed to be required shall in no case exceed the maximum rate of speed prescribed by the directors of such railway or railways for the conveyance of passengers by their first-class trains; but that no alteration in the rate of speed of any train by which the mails shall be conveyed shall be made until six calendar months' previous notice shall be given to the Postmaster-General of any such intended alteration.

Special train.

(a) See Regulation of Railways Act, 1868, 31 & 32 Vict. c. 119, ss. 36 and 37, *ante*.

Guard.

(b) The guard may be dispensed with under s. 16 of 10 & 11 Vict. c. 85.

If required, carriage to be applied exclusively to such conveyance.

II. And be it enacted, That it shall be lawful for the Postmaster-General (if he shall see fit) to require that the whole of the inside of any carriage used on any railway for the conveyance of mails or post letter bags shall be exclusively appropriated for the purpose of carrying the mails (a).

(a) See s. 11 of 31 & 32 Vict. c. 119, *ante*.

III. And be it enacted, That the company of proprietors of any such railway shall, on being required so to do by the Postmaster-General, provide and furnish (in addition to the carriages aforesaid) a separate carriage or separate carriages, fitted up as the Postmaster-General, or such person as he shall nominate in that behalf, shall direct, for the purpose of sorting letters therein, and shall forward the same carriage or carriages by their railway, at such hours or times, and subject to all such reasonable regulations as aforesaid, as the Postmaster-General shall in that behalf order or direct; and such company of proprietors shall receive, take up, carry, and convey in any such last-mentioned carriage or carriages all such post letter bags and officers of the Post-office as the Postmaster-General shall reasonably require, and shall deliver and leave any post letter bags and officers of the Post-office at such places on the line of the railway as the Postmaster-General shall in that behalf from time to time reasonably order and direct.

1 & 2 Vict. c. 98.
Railway company, if required, to provide separate carriage for sorting letters.

IV. And be it enacted, That in case the Postmaster-General shall at any time be desirous of sending by any such railway any of Her Majesty's mail coaches or mail carts, with the mails or post letter bags and guards thereof, and carriages for sorting letters, with any officers of the Post-office therein, instead of sending the said mails or post letter bags, guards, and officers of the Post-office by carriages to be provided by such railway company as aforesaid, then and in any such case such railway company shall, at the request of the Postmaster-General, signified by such notice as aforesaid, cause such mail coaches or mail carts, with the mails or post letter bags and guards thereof, and carriages for sorting letters, with any officers of the Post-office therein, to be conveyed by the usual or proper trucks or frames on their said railway, subject to such regulations and restrictions of the Postmaster-General as hereinbefore mentioned.

Postmaster-General may direct mails to be carried on railway in mail coaches, in lieu of company's carriages.

V. And be it enacted, That for the greater security of the mails or post letter bags so to be carried or conveyed by railways, the company of proprietors of such respective railways along which such mails or post letter bags, mail coaches, or carts and carriages for sorting letters shall be so required by the Postmaster-General to be conveyed, and their respective officers, servants, and agents, shall obey, observe, and perform all such reasonable regulations respecting the conveyance, delivering, and leaving of such mails and post letter bags, guards, and officers of the Post-office, mail coaches, or carts and carriages, on any such railways, or on the line thereof, as the Postmaster-

Railway companies to be subject to directions of Post-office respecting conveyance of mails.

1 & 2 Vict. c. 98. General, or such officer of the Post-office as he shall nominate in that behalf, shall in his discretion from time to time give or make: Provided always, that it shall not be lawful for any officer or servant of the Post-office to interfere with or give orders to the engineer or other person having the charge of any engine upon any railway along which mails or post letter bags shall be conveyed; but if any cause of complaint shall arise, the same shall be stated to the conductor or other officer of the railway company having the charge of the train, or to the chief officer at any station upon the railway; and in case of any default or neglect on the part of any officers or servants of the railway company to comply with any of the regulations of the Postmaster-General or other officer of the Post-office so to be nominated as aforesaid, the railway company shall be wholly responsible for the same.

Remuneration to railway companies for conveyance of mails.

VI. And be it enacted, That every company of proprietors of any railway along which such mails or post letter bags, mail coaches, carts, or carriages shall be so required by the Postmaster-General to be conveyed, shall be entitled to such reasonable remuneration to be paid by the Postmaster-General to any such company of proprietors for the conveyance of such mails, post letters bags, mail guards, and other officers of the Post-office, mail coaches, carts, and carriages, in manner required by such Postmaster-General, or by such officer of the Post-office as he shall in that behalf nominate as aforesaid, as shall (either prior to or after the commencement of such service) be fixed and agreed on between the Postmaster-General and such company of proprietors, or in case of difference of opinion between them then as shall be determined by arbitration as hereinafter provided, but so that the services which may be required by the Postmaster-General, or by such officer of the Post-office as he in that behalf shall nominate as aforesaid, to be performed by any such company of proprietors, be not suspended, postponed, or deferred by reason of such remuneration not having been then fixed or agreed on between the said Postmaster-General and such company of proprietors, or by reason of the award on any reference to arbitration to determine the remuneration not having been then made.

Agreements between Postmaster-General and railway companies as to amount of remuneration, &c., may be altered.

VII. And be it enacted, That notwithstanding any agreement entered into between the Postmaster-General and any such company, or any award to be made on any such reference as aforesaid, fixing the amount of remuneration to be paid to such company for any services to be rendered by them as aforesaid, it shall be lawful and competent to and for the Postmaster-

General, by notice in writing, to require, from and after the day 1 & 2 Vict. c. 98. to be named in any such notice, not being less than twenty-eight days from the delivery thereof, any addition to be made to the services in respect of which such agreement shall be entered into or award made; and in any such case, and also in case of a discontinuance of any part of such services as herein-after provided, a fresh agreement shall be entered into between the Postmaster-General and such company, regulating the future amount of remuneration to be paid by the Postmaster-General to such company for such increased or diminished services, as the case may be; or if the parties cannot agree on such amount, the same shall be referred to arbitration in like manner as hereinbefore is mentioned and hereinafter provided as to any original agreement; and such arbitrators shall have power to award any compensation they may consider reasonable to be paid to any railway company for any loss that may have been occasioned to them by the discontinuance or alteration of the services previously agreed to be performed by them by any train or carriage specially required by the Postmaster-General to be forwarded for the conveyance of the mails, but so that nevertheless such increased or diminished services shall not be suspended, postponed, or deferred by reason of the amount of such increased or diminished remuneration not having been then fixed or agreed on between the Postmaster-General and such company of proprietors, or by reason of the award on any reference to arbitration to determine the amount of such increased or diminished remuneration not having been then made.

VIII. And be it enacted, That it shall be lawful for the Postmaster-General, and he is hereby authorised, at any time during the continuance of the services of any company of proprietors as aforesaid, to give to such company, by writing under his hand, six calendar months' previous notice that such services or any part thereof shall cease and determine; and thereupon, at the expiration of such six calendar months' notice, the said services, or such part thereof as aforesaid, and the remuneration for the same, shall cease and determine.

Postmaster-General may terminate services of railway companies, on notice;

IX. And be it enacted, That it shall be lawful for the Postmaster-General at any time during the continuance of the services of any company of proprietors as aforesaid, by notice in writing under his hand, absolutely to determine and put an end to the same or any part thereof, without giving any previous notice, or on giving any notice less than six calendar months in respect thereof, and thereupon the said services shall cease and determine accordingly: Provided nevertheless, that in case the

or may terminate services of railway companies without notice, subject to certain conditions.

1 & 2 Vict. c. 98. Postmaster-General shall, without giving six calendar months' notice as aforesaid, at any time determine the services to be required by the Postmaster-General of any company of proprietors, or any part of such services, without any cause whatever, or for any cause other than the default by such company of proprietors in the performance of any of the services to be required of them by the Postmaster-General, or the breach by such company of proprietors of any of their engagements with the Postmaster-General, then and in any such case the Postmaster-General shall make to such company a full and fair compensation for all loss thereby occasioned, the amount whereof in case the parties differ about the same shall be ascertained by arbitration, as hereinafter mentioned.

Royal arms to be painted on engines or carriages provided for the service of the Post-office.

X. And be it enacted, That on all carriages to be provided for the service of the Post-office on any such railway, there shall on the outside be painted the royal arms, in lieu of the name of the owner and of the number of the carriage, and of all other requisites, if any, prescribed by law in respect of carriages passing on any such railway; but the want of such royal arms on any carriage belonging to or used by the Post-office shall not form an objection to such carriage running on any railway, anything to the contrary notwithstanding.

Bye-laws of railway companies not to be repugnant to provisions of act.

XI. And be it enacted, That it shall not be competent or lawful to or for the company of proprietors of any railway to make any bye-laws, orders, rules, or regulations which shall militate against, or be contrary or repugnant to, any of the enactments herein contained; and that if any company of proprietors shall make or shall have made any such bye-laws, orders, rules, or regulations, either prior or subsequently to the Postmaster-General signifying to the said company his intention that the mails or post letter bags, mail coaches, carts, or carriages shall be conveyed by such railway, all such bye-laws, orders, rules, and regulations, so far as they shall militate against or be contrary or repugnant to any of the enactments herein contained, shall be deemed absolutely void and of no effect, in like manner as if such bye-laws, orders, rules, or regulations had never been made or passed, anything to the contrary in anywise notwithstanding.

Penalty for refusing or neglecting to convey mails.

XII. And be it enacted, That if the company of proprietors of any railway, or any of their respective officers, servants, or agents, shall refuse or neglect to carry or convey any mails or post letter bags, when tendered to them for such purpose by the Postmaster-General or any officer of the Post-office, or shall

refuse to carry on their railway any mail coaches, carts, or car-1 & 2 Vict. c. 98.
riages as hereinbefore provided, when so required by the Postmaster-General, or shall refuse or neglect to receive, take up, deliver, and leave any such mails or post letter bags, mail guards, or other officers of the Post-office, mail coaches, carts, or carriages, at such places, at such times, on such days, and subject to such regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, as the Postmaster-General shall from time to time reasonably direct or appoint, as hereinbefore provided, or shall not obey, observe, and perform all such regulations respecting the conveyance of the mails and post letter bags, mail coaches, carts, and carriages on any such railway as the Postmaster-General, or such officer of the Post-office as he shall nominate in that behalf, shall make for the purposes aforesaid, then and in any such case the company of proprietors who, or whose officer, servant, or agent, shall so offend in the premises, shall for every such offence forfeit and pay a sum not exceeding twenty pounds: Provided nevertheless, that the payment of or liability to such penalty shall not in any manner lessen or affect the liability of any such company under any bond which may have been given by them under the provisions hereinafter contained.

XIII. And be it enacted, That it shall be lawful for the Postmaster-General, if he shall so think fit, to require the company of proprietors of any railway already made or in progress or to be hereafter made within the United Kingdom to give security by bond to Her Majesty, her heirs and successors, conditioned to be void if such company shall from time to time carry or convey, or cause to be carried or conveyed, all such mails or post letter bags, mail guards, and other officers of the Post-office, mail coaches, carts, and carriages in manner hereinbefore mentioned, when thereunto required by the Postmaster-General, or any officer of the Post-office duly authorised for that purpose, and shall receive, take up, deliver, and leave all such mails or post letter bags, guards, and officers, mail coaches, carts, and carriages, at such places, at such times, on such days, and subject to such regulations and restrictions as to speed of travelling, places, times, and duration of stoppages, as hereinbefore mentioned, and shall obey, observe, and perform all such regulations respecting the same as the Postmaster-General shall reasonably make, and shall well and truly do and perform, and cause to be done and performed, all such other acts, matters, and things as by this act are required or directed to be done or performed by or on the part or behalf of such company, their officers, servants, and agents; and every such bond shall be

Postmaster-General may require railway companies to give security by bond.

1 & 2 Vict. c. 98. taken in such sum and in such form as the Postmaster-General shall think proper; and every such security shall be renewed from time to time whenever and so often as such bond shall be forfeited, and also whenever and so often as the Postmaster-General shall in his discretion require the same to be renewed; and if any company of proprietors of any such railway as aforesaid shall, when so required as aforesaid, refuse or neglect, for the space of one calendar month next after the delivery of any notice for such purpose to them given by or from the Postmaster-General, to execute to Her Majesty, her heirs and successors, such bond to the effect and in manner aforesaid, or shall at any time refuse or neglect to renew such bond whenever and so often as the same shall by or in pursuance of this act be required to be renewed, such company of proprietors shall forfeit one hundred pounds for every day during the period for which there shall be any refusal, neglect, or default to give or renew such security as aforesaid, after the expiration of the said one calendar month.

Lessees of railway, not being a body corporate or company, to be required to give security by bond above £1000.

XIV. Provided always, and be it enacted, That in all cases in which any railway or part of a railway may, previous to the passing of this act, have been demised or let by the company of proprietors thereof, the body corporate or company, or other persons to whom the same shall have been so demised or let, their successors, executors, administrators, or assigns, shall during the continuance of such lease be liable to all the provisions of this act for or in respect of such railway or part of a railway, in lieu of such company of proprietors, but so that such lessees, (not being a body corporate or company,) their executors, administrators, or assigns, shall not be required in respect of any such railway or part of a railway to give security under the foregoing enactment to any amount in any one bond exceeding the sum of one thousand pounds, and shall not in any one year be liable in damages to be recovered upon any bonds which they may have given to any amount exceeding the sum of one thousand pounds and costs of suits.

Service of notices.

XV. And be it enacted, That all notices under the provisions of this act by or on behalf of the Postmaster-General to any company of proprietors of any railway as aforesaid, shall be considered as duly served on any company of proprietors in case the same shall be given or delivered to any one or more of the directors of such company, or to the secretary or clerk of such company, or be left at any station belonging to such company.

For settling differences between

XVI. And be it enacted, That in all cases in which the Post-

master-General and any company of proprietors of any railway shall not be able to agree on the amount of remuneration or compensation to be paid by the Postmaster-General to such company of proprietors for any services performed or to be performed by them as hereinbefore mentioned, the same shall be referred to the award of two persons, one to be named by the Postmaster-General, and the other by such company; and if such two persons cannot agree on the amount of such remuneration or compensation, then to the umpirage of some third person, to be appointed by such two first-named persons previously to their entering upon the inquiry; and the said award or umpirage, as the case may be, shall be binding and conclusive on the said parties, and their respective successors and assigns.

1 & 2 VICT. c.
Postmaster-General and railway companies in certain cases.

XVII. And be it enacted, That after any contract entered into or award made under the authority of this act shall have continued in operation for a period of three years, it shall be competent for any railway company who may consider themselves aggrieved by the terms of remuneration fixed by such contract or award, by notice under their common seal, to require that it shall be referred to arbitrators to determine whether any and what alteration ought to be made therein; and thereupon such arbitrators or umpire to be appointed as hereinbefore mentioned shall proceed to inquire into the circumstances, and make their award therein, as in the case of an original agreement: Provided always, that the services performed by such railway company for the Post-office shall in nowise be interrupted or impeded thereby.

Railroad companies, after contracts have existed for a certain period, may refer them to arbitrators to decide as to their continuance.

XVIII. And be it enacted, That in all references to be made under the authority of this act, the Postmaster-General, or the railway company, as the case may be, shall nominate his or their arbitrator within fourteen days after notice from the other party, or in default, it shall be lawful for the arbitrator appointed by the party giving notice to name the other arbitrator; and such arbitrators shall proceed forthwith in the reference, and make their award therein within twenty-eight days after their appointment, or otherwise the matter shall be left to be determined by the umpire; and if such umpire shall refuse or neglect to proceed and make his award for the space of twenty-eight days after the matter shall have been referred to him, then a new umpire shall be appointed by the two first-named arbitrators, who shall in like manner proceed and make his award within twenty-eight days, or in default be superseded, and so *toties quoties*.

Nomination of arbitrators to be within a limited time after application for reference made.

1 & 2 Vict. c. 98. XIX. And be it enacted, That whenever the term "company of proprietors," or "railway company," or "company" is used in this act, the same shall extend to and be construed to include the proprietors for the time being of any railway, whether a body corporate or individuals, and also (during the continuance of any demise or lease as aforesaid) any person, whether a body corporate or company of individuals, to whom any railway or part of a railway may previous to the passing of this act have been demised or let, and their successors, executors, administrators, and assigns, unless the subject or context be otherwise repugnant to such construction; and that the provisions of this act shall be construed according to the respective interpretations of the terms and expressions contained in an act passed in the first year of the reign of her present Majesty, intituled "An Act for consolidating the laws relative to offences against the Post-office of the United Kingdom, and for regulating the judicial administration of the Post-office laws, and for explaining certain terms and expressions employed in those laws," so far as those interpretations are not repugnant to the subject or inconsistent with the context of such provisions; and that this present act shall be deemed and construed to be a Post-office act within the intent and meaning of the said last-mentioned act; and the pecuniary penalties hereby imposed shall be recovered and recoverable in the manner and form therein particularly mentioned and expressed with reference to the pecuniary penalties imposed by the Post-office acts: Provided nevertheless, that any justice of the peace having jurisdiction for any county through which any railway shall pass, in respect of which any penalty or forfeiture under this act shall have been incurred, shall and may hear and determine any offence against this act which may subject any company to a pecuniary penalty not exceeding twenty pounds; and a summons issued under the Post-office acts by any such justice against any railway company for the recovery of any such penalty shall be deemed to be sufficiently served in case either the summons or a copy thereof be delivered to any officer, servant, or agent of such company, or be left at any station belonging to such company.

Act may be amended or repealed.

XX. And be it enacted, That this act may be amended or repealed by any act to be passed in the present session of Parliament.

3 & 4 VICT. c. 97.

*An Act for Regulating Railways.**—[10th August 1840.]

WHEREAS it is expedient for the safety of the public to provide for the due supervision of railways: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that, after two months from the passing of this act, no railway, or portion of any railway, shall be opened for the public conveyance of passengers or goods until one calendar month after notice in writing of the intention of opening the same shall have been given, by the company to whom such railway shall belong, to the Lords of the Committee of Her Majesty's Privy Council appointed for Trade and Foreign Plantations (a).

No railway to be opened without notice to the Board of Trade.

(a) This section is repealed by s. 3, and other provisions substituted by ss. 4-6, of 5 & 6 Vict. c. 55, *post*.

II. And be it enacted, That if any railway, or portion of any railway, shall be opened without due notice as aforesaid, the company to whom such railway shall belong shall forfeit to Her Majesty the sum of twenty pounds for every day during which the same shall continue open, until the expiration of one calendar month after the company shall have given the like notice as is hereinbefore required before the opening of the railway; and any such penalty may be recovered in any of Her Majesty's Courts of Record (a).

Penalty for opening railways without notice.

(a) This section is repealed by 5 & 6 Vict. c. 55.

III. And be it enacted, That the Lords of the said Committee may order and direct every railway company to make up and deliver to them returns, according to a form to be provided by the Lords of the said Committee, of the aggregate traffic in passengers, according to the several classes, and of the aggregate traffic in cattle and goods, respectively, on the said railway, as well as of all accidents which shall have occurred thereon attended with personal injury, and also a table of all tolls, rates,

Returns to be made by railway companies.

* See also the Acts of 1842, (5 & 6 Vict. c. 55,) 1844, (7 & 8 Vict. c. 85,) *post*, and 1868, (31 & 32 Vict. c. 119,) *ante*.

3 & 4 Vict. c. 97. and charges from time to time levied on each class passengers, and on cattle and goods, conveyed on the said railway; and if the returns herein specified shall not be delivered within thirty days after the same shall have been required, every such company shall forfeit to Her Majesty the sum of twenty pounds for every day during which the said company shall wilfully neglect to deliver the same; and every such penalty may be recovered in any of Her Majesty's Courts of Record: Provided always, that such returns shall be required, in like manner and at the same time, from all the said companies, unless the Lords of the said Committee shall specially exempt any of the said companies, and shall enter the grounds of such exemption in the minutes of their proceedings.

Penalty for making false returns.

IV. And be it enacted, That every officer of any company who shall wilfully make any false return to the Lords of the said Committee shall be deemed guilty of a misdemeanour.

Board of Trade may appoint persons to inspect railways.

V. And be it enacted, That it shall be lawful for the Lords of the said Committee, if and when they shall think fit, to authorise any proper person or persons to inspect any railway (a); and it shall be lawful for every person so authorised, at all reasonable times, upon producing his authority, if required, to enter upon and examine the said railway, and the stations, works, and buildings, and the engines and carriages belonging thereto: Provided always, that no person shall be eligible to the appointment as inspector as aforesaid who shall within one year of his appointment have been a director or have held any office of trust or profit under any railway company.

(a) Amended by s. 15 of 7 & 8 Vict. c. 85, *post*.

Penalty on persons obstructing inspector.

VI. And be it enacted, That every person wilfully obstructing any person, duly authorised as aforesaid, in the execution of his duty, shall, on conviction before a justice of the peace having jurisdiction in the place where the offence shall have been committed, forfeit and pay for every such offence any sum not exceeding ten pounds; and on default of payment of any penalty so adjudged, immediately or within such time as the said justice of the peace shall appoint, the same justice, or any other justice having jurisdiction in the place where the offender shall be or reside, may commit the offender to prison for any period not exceeding three calendar months; such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to the next ensuing Court of Quarter Sessions in the usual manner.

VII. And whereas many railway companies are or may here-^{3 & 4 Vict. c. 97.} after be empowered by Act of Parliament to make bye-laws (a), Copies of exist-
orders, rules, or regulations, and to impose penalties for the ing bye-laws to
enforcement thereof, upon persons other than the servants of be laid before
the said companies, and it is expedient that such powers should the Board of
be under proper control; be it enacted, That true copies of all Trade;
such bye-laws, orders, rules, and regulations made under any
such powers by every such company before the passing of this
act, certified in such manner as the Lords of the said Committee
shall from time to time direct, shall, within two calendar months
after the passing of this act, be laid before the Lords of the said
Committee; and that every such bye-law, order, rule, or regula- otherwise to be
tion, not so laid before the Lords of the said Committee within void.
the aforesaid period, shall, from and after that period, cease to
have any force or effect, saving in so far as any penalty may
have been then already incurred under the same.

(a) As to bye-laws, see notes to s. 108 of the Railways Clauses Act, 1845,
ante. See also the bye-laws issued by the Board of Trade for regulating
travelling upon railways, *post*.

VIII. And be it enacted, That no such bye-law, order, No future bye-
rule, or regulation made under any such power, and which laws to be valid
shall not be in force at the time of the passing of this act, and till two calendar
no order, rule, or regulation annulling any such existing bye- months after
law, rule, order, or regulation which shall be made after the they have been
passing of this act, shall have any force or effect until two laid before the
calendar months after a true copy of such bye-law, order, rule, Board of Trade.
or regulation, certified as aforesaid, shall have been laid before
the Lords of the said Committee, unless the Lords of the said
Committee shall, before such period, signify their approbation
thereof.

IX. And be it enacted, That it shall be lawful for the Lords Board of Trade
of the said Committee, at any time either before or after any may disallow
bye-law, order, rule, or regulation shall have been laid before bye-laws.
them as aforesaid shall have come into operation, to notify to
the company who shall have made the same their disallowance
thereof, and, in case the same shall be in force at the time of
such disallowance, the time at which the same shall cease to be
in force; and no bye-law, order, rule, or regulation which shall
be so disallowed shall have any force or effect whatsoever, or, if it
shall be in force at the time of such disallowance, it shall cease
to have any force or effect at the time limited in the notice of
such disallowance, saving in so far as any penalty may have been
then already incurred under the same.

3 & 4 Vict. c. 97.

Provisions of
Railway Acts re-
quiring confir-
mation of bye-
laws repealed.

X. And be it enacted, That so much of every clause, provision, and enactment in any act of Parliament heretofore passed as may require the approval or concurrence of any justice of the peace, Court of Quarter Sessions, or other person or persons, other than members of the said companies, to give validity to any bye-laws, orders, rules, or regulations made by any such company, shall be repealed.

Board of Trade
may direct prose-
cutions to enforce
provisions of
Railway Acts (a).

XI. And be it enacted, That whenever it shall appear to the lords of the said committee that any of the provisions of the several acts of Parliament regulating any of the said companies, or the provisions of this act, have not been complied with on the part of any of the said companies, or of any of their officers, and that it would be for the public advantage that the due performance of the same should be enforced, the Lords of the said Committee shall certify the same to her Majesty's Attorney-General for *England* or *Ireland*, or to the Lord Advocate for *Scotland*, as the case may require; and thereupon the said Attorney-General or Lord Advocate shall, by information, or by action, bill, plaint, suit at law or in equity, or other legal proceeding, as the case may require, proceed to recover such penalties and forfeitures, or otherwise to enforce the due performance of the said provisions, by such means as any person aggrieved by such noncompliance, or otherwise authorised to sue for such penalties, might employ under the provisions of the said acts: Provided always, that no such certificate as aforesaid shall be given by the Lords of the said Committee until twenty-one days after they shall have given notice of their intention to give the same to the company against or in relation to whom they shall intend to give the same.

Notice to be
given to the
company.

(a) This section is repealed by s. 17 of 7 & 8 Vict. c. 85 and other provisions substituted by ss. 17 & 18; see *post*.

Prosecutions to
be under sanc-
tion of Board of
Trade, and within
one year after
the offence.

XII. And be it enacted, That no legal proceedings shall be commenced under the authority of the Lords of the said Committee against any railway company for any offence against this act, or any of the several acts of Parliament relating to railways, except upon such certificate of the Lords of the said Committee as aforesaid, and within one year after such offence shall have been committed.

Punishment of
servants of rail-
way companies
guilty of miscon-
duct.

XIII. And be it enacted, That it shall be lawful for any officer or agent of any railway company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine-driver, guard, porter, or other servant in the employ of such company who

shall be found drunk while employed upon the railway, or com- 3 & 4 Vict. c. 97.
mit any offence against any of the bye-laws, rules, or regula-
tions of such company, or shall wilfully, maliciously, or negli-
gently do or omit to do any act whereby the life or limb of
any person passing along or being upon the railway belonging
to such company, or the works thereof respectively, shall be or
might be injured or endangered, or whereby the passage of any
of the engines, carriages, or trains shall be or might be ob-
structed or impeded, and to convey such engine-driver, guard,
porter, or other servant so offending, or any person counselling,
aiding, or assisting in such offence, with all convenient despatch,
before some justice of the peace for the place within which such
offence shall be committed, without any other warrant or autho-
rity than this act; and every such person so offending, and
every person counselling, aiding, or assisting therein as afore-
said, shall, when convicted before such justice as aforesaid, (who
is hereby authorised and required, upon complaint to him made,
upon oath, without information in writing, to take cognisance
thereof, and to act summarily in the premises,) in the discretion
of such justice, be imprisoned with or without hard labour, for
any term not exceeding two calendar months, or, in the like dis-
cretion of such justice, shall for every such offence forfeit to Her
Majesty any sum not exceeding ten pounds, and in default of
payment thereof, shall be imprisoned, with or without hard
labour as aforesaid, for such period, not exceeding two calendar
months, as such justice shall appoint; such commitment to be
determined on payment of the amount of the penalty; and
every such penalty shall be returned to the next ensuing Court
of Quarter Sessions in the usual manner.

XIV. Provided always, and be it enacted, That (if upon the
hearing of any such complaint he shall think fit) it shall be
lawful for such justice, instead of deciding upon the matter of
complaint summarily, to commit the person or persons charged
with such offence for trial for the same at the Quarter Sessions
for the county or place wherein such offence shall have been
committed, and to order that any such person so committed
shall be imprisoned and detained in any of Her Majesty's gaols
or houses of correction in the said county or place in the mean-
time, or to take bail for his appearance, with or without sureties,
in his discretion; and every such person so offending, and con-
victed before such Court of Quarter Sessions as aforesaid, (which
said court is hereby required to take cognisance of and hear and
determine such complaint,) shall be liable, in the discretion of
such court, to be imprisoned, with or without hard labour, for
any term not exceeding two years.

Justice of the
peace empow-
ered to send any
case to be tried
by the Quarter
Sessions.

3 & 4 Vict. c. 97.

Punishment of
persons obstruct-
ing railway.

XV. And be it enacted, That from and after the passing of this act every person who shall wilfully do or cause to be done anything in such manner as to obstruct any engine or carriage using any railway, or to endanger the safety of persons conveyed in or upon the same, or shall aid or assist therein, shall be guilty of a misdemeanour, and being convicted thereof, shall be liable, at the discretion of the court before which he shall have been convicted, to be imprisoned, with or without hard labour, for any term not exceeding two years.

For punishment
of persons ob-
structing the
officers of any
railway com-
pany, or tres-
passing upon
any railway.

XVI. And be it enacted, That if any person shall wilfully obstruct or impede any officer or agent of any railway company in the execution of his duty upon any railway, or upon or in any of the stations or other works or premises connected therewith, or if any person shall wilfully trespass upon any railway, or any of the stations or other works or premises connected therewith, and shall refuse to quit the same upon request to him made by any officer or agent of the said company, every such person so offending, and all others aiding or assisting therein, shall and may be seized and detained by any such officer or agent, or any person whom he may call to his assistance, until such offender or offenders can be conveniently taken before some justice of the peace for the county or place wherein such offence shall be committed, and when convicted before such justice as aforesaid, (who is hereby authorised and required, upon complaint to him upon oath, to take cognizance thereof, and to act summarily in the premises,) shall, in the discretion of such justice, forfeit to Her Majesty any sum not exceeding five pounds, and in default of payment thereof shall, or may be, imprisoned for any term not exceeding two calendar months, such imprisonment to be determined on payment of the amount of the penalty.

Proceedings not
to be quashed
for want of form,
or removed into
the superior
courts.

XVII. And be it enacted, That no proceeding to be had and taken in pursuance of this act shall be quashed or vacated for want of form, or be removed by *certiorari*, or by any other writ or process whatsoever, into any of Her Majesty's Courts of Record at *Westminster* or elsewhere, any law or statute to the contrary notwithstanding.

Repeal of all
provisions in
Railway Acts
that empower
two justices to
decide disputes
respecting the
proper places
for openings in

XVIII. And whereas many railway companies are bound, by the provisions of the acts of Parliament by which they are incorporated or regulated, to make, at the expense of the owner or occupier of lands adjoining the railway, openings in the ledges or flanches thereof, (except at certain places on such railway in the said acts specified,) for effecting communications

between such railway and any collateral or branch railway to be laid down over such lands, and any disagreement or difference which shall arise as to the proper places for making any such openings in the ledges or flanches, is by such acts directed to be referred to the decision of any two justices of the peace within their respective jurisdictions: And whereas it is expedient that so much of every clause, provision, and enactment in any act of Parliament heretofore passed, as gives to any justice or justices the power of hearing or deciding upon any such disagreement or difference as to the proper places for any such openings in the ledges or flanches of any railway, should be repealed; be it therefore enacted, That so much of every such clause, provision, and enactment as aforesaid shall be repealed.

XIX. And be it enacted, That in case any disagreement or difference shall arise between any such owner or occupier, or other persons, and any railway company, as to the proper places for any such openings in the ledges or flanches of any railway, (except at such places as aforesaid,) for the purpose of such communication, then the same shall be left to the decision of the Lords of the said Committee, who are hereby empowered to hear and determine the same in such way as they shall think fit, and their determination shall be binding on all parties.

XX. And be it enacted, That all notices, returns, and other documents required by this act to be given to or laid before the Lords of the said Committee shall be delivered at or sent by the post to the office of the Lords of the said Committee; and all notices, appointments, requisitions, certificates, or other documents in writing, signed by one of the Secretaries of the said Committee, or by some officer appointed for that purpose by the Lords of the said Committee, and purporting to be made by the Lords of the said Committee, shall, for the purposes of this act, be deemed to have been made by the Lords of the said Committee; and service of the same upon any one or more of the directors of any railway company, or on the secretary or clerk of the said company, or by leaving the same with the clerk or officer at one of the stations belonging to the said company, shall be deemed good service upon the said company.

XXI. And be it enacted, That wherever the word "railway" is used in this act, it shall be construed to extend to all railways constructed under the powers of any act of Parliament, and intended for the conveyance of passengers in or upon carriages drawn or impelled by the power of steam, or by any other mechanical power; and wherever the word "company" is used

§ 4 Vict. c. 27.
the ledges or
flanches of rail-
ways.

Board of Trade
to determine
such disputes in
future.

Communications
to the Board to
be left at their
office.

Communications
by the Board,
how to be
authenticated.

What shall be
deemed good
service on rail-
way company.

Meaning of
the words "rail-
way" and
"company."

3 & 4 Vict. c. 97. in this act, it shall be construed to extend to and include the proprietors for the time being of any such railway, whether a body corporate or individuals, and their lessees, executors, administrators, and assigns, unless the subject or context be repugnant to such construction.

Act may be
repealed this
session.

XXII. And be it enacted, That this act may be amended or repealed by any act to be passed in the present session of Parliament.

5 & 6 VICT. C. 55.

An Act for the better Regulation of Railways, and for the Conveyance of Troops.—[30th July 1842.]

WHEREAS by an act passed in the third and fourth years of the reign of her present Majesty, intituled, "An Act for Regulating Railways," provision was made for the supervision of railways: And whereas it is expedient for the safety of the public to make further provision for that purpose; be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That this act shall come into operation on the passing thereof.

3 & 4 Vict. c. 97.

Commencement
of act.

Recited act and
this act to be
construed to-
gether.

II. And be it enacted, That the provisions of the said recited act and of this act shall be construed together as one act, except so far as the provisions of the said recited act are hereby repealed, or shall be inconsistent with the provisions of this act.

Notice before
opening railway
repealed.

III. And whereas by the said recited act it is enacted, that after two months from the passing of the said recited act no railway, or portion of any railway, shall be opened for the public conveyance of passengers or goods until one calendar month after notice in writing of the intention of opening the same shall have been given, by the company to whom such railway shall belong, to the Lords of the Committee of Her Majesty's Privy Council appointed for Trade and Foreign Plantations: And whereas by the said recited act it is also enacted, that if any railway or portion of any railway shall be opened without due notice as aforesaid, the company to whom such railway shall belong shall forfeit to Her Majesty the sum of twenty pounds for every day during which the same shall

continue open, until the expiration of one calendar month after 5 & 6 Vict. c. 55. the company shall have given the like notice as is hereinbefore required before the opening of the railway, and any such penalty may be recovered in any of Her Majesty's Courts of Record; be it enacted, That the said recited provisions of the said act shall be and they are hereby repealed.

IV. And be it enacted, That no railway or portion of any railway shall be opened for the public conveyance of passengers until one calendar month after notice in writing of the intention of opening the same shall have been given, by the company to whom such railway shall belong, to the Lords of the Committee of Her Majesty's Privy Council appointed for Trade and Foreign Plantations, and until ten days after notice in writing shall have been given by the said company to the Lords of the said Committee of the time when the said railway or portion of railway will be, in their opinion, sufficiently completed for the safe conveyance of passengers, and ready for inspection. Notice of intended opening of railway.

V. And be it enacted, That if any railway or portion of any railway shall be opened without such notice as aforesaid, the company to whom such railway shall belong shall forfeit to Her Majesty the sum of twenty pounds for every day during which the same shall continue open until the said notices shall have been duly given and shall have expired; and every such penalty may be recovered in any of Her Majesty's Courts of Record, or in the Court of Session or in any of the sheriffs' courts in Scotland. If railway opened without notice, company to forfeit £20.

VI. And be it enacted, That if the officer or officers appointed by the Lords of the said Committee to inspect any such railway or portion of railway shall, after inspection thereof, report in writing to the Lords of the said Committee that, in his or their opinion the opening of the same would be attended with danger to the public using the same, by reason of the incompleteness of the works or permanent way, or the insufficiency of the establishment for working such railway, together with the grounds of such opinion, it shall be lawful for the Lords of the said Committee, and so from time to time, as often as such officers shall after further inspection thereof so report, to order and direct the company to whom such railway shall belong, to postpone such opening for any period not exceeding one calendar month at any one time, until it shall appear to the Lords of the said Committee that such opening may take place without danger to the public; and if any such railway, or any portion thereof, shall be opened contrary to any such order and direction Board of Trade empowered to postpone the opening.

5 & 6 VICT. c. 55. of the Lords of the said Committee, the company to whom such railway shall belong shall forfeit to Her Majesty the sum of twenty pounds for every day during which the same shall continue open contrary to such order and direction; and any such penalty may be recovered in any of Her Majesty's Courts of Record, or in the Court of Session or in any of the sheriffs'-courts in *Scotland*: Provided always that no such order as aforesaid shall be binding upon any railway company unless therewith shall be delivered to the said company a copy of the report of the officer or officers on which such order shall be founded.

Notice of accidents to be given to the Board of Trade.

VII. And be it enacted, That every railway company shall, within forty-eight hours after the occurrence upon the railway belonging to such company of any accident attended with serious personal injury to the public using the same, give notice thereof to the Lords of the said Committee; and if any company shall wilfully omit to give such notice, every such company shall forfeit to Her Majesty the sum of five pounds for every day during which the omission to give the same shall continue; and every such penalty may be recovered in any of Her Majesty's Courts of Record, or in the Court of Session or in any of the sheriffs'-courts in *Scotland*.

Board of Trade empowered to direct returns.

VIII. And be it enacted, That the Lords of the said Committee may order and direct any railway company to make up and deliver to them returns of serious accidents occurring in the course of the public traffic upon the railway belonging to such company, whether attended with personal injury or not, in such form and manner as the Lords of the said Committee shall deem necessary and require for their information with a view to the public safety; and if any such returns shall not be so delivered within fourteen days after the same shall have been required, every such company shall forfeit to Her Majesty the sum of five pounds for every day during which the said company shall neglect to deliver the same; and every such penalty may be recovered in any of Her Majesty's Courts of Record, or in the Courts of Session or in any of the sheriffs'-courts in *Scotland*: Provided always, that all such returns shall be privileged communications, and shall not be evidence in any court whatsoever.

Gates at level crossings to be kept closed across the road.
2 & 3 Vict. c. 46.

IX. And whereas by an act passed in the second and third years of her present Majesty, and intituled, "An Act to amend an Act of the fifth and sixth years of his late Majesty, King William the Fourth, relating to Highways," it was enacted, that whenever a railway crosses or shall hereafter cross any turnpike

road, or any other highway or statute labour road for carts or 5 & 6 VICT. c. 55.
 carriages in *Great Britain*, the proprietors or directors of the said railway shall make and maintain good and sufficient gates (a) across each end of such turnpike or other road at each end of the said crossings, and shall employ good and proper persons to open and shut such gates, so that the persons, carts, or carriages passing along such turnpike or other road shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railway: And whereas by the acts relating to certain railways it is provided that such gates shall be kept constantly closed across the railway, except during the time when carriages or engines passing along the railway shall have to cross such turnpike or other road: And whereas experience has shown that it is more conducive to safety that such gates should be kept closed across the turnpike or other road instead of across the railway; be it therefore enacted, That, notwithstanding any thing to the contrary contained in any act of Parliament heretofore passed, such gates shall be kept constantly closed across each end of such turnpike or other roads, in lieu of across the railway, except during the time when horses, cattle, carts, or carriages, passing along such turnpike or other road shall have to cross such railway; and such gates shall be of such dimensions and so constructed as, when closed across the ends of such turnpike or other roads, to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway while the gates are closed: Provided always, Proviso. that it shall be lawful for the Lords of the said Committee, in any case in which they are satisfied that it will be more conducive for the public safety that the gates at any level crossing over any such turnpike or other road should be kept closed across the railway, to order and direct that such gates shall be kept so closed, instead of across the road; and such order of the Lords of the said Committee shall be a sufficient authority for the directors or proprietors of any railway company to whom such order is addressed for keeping such gates closed, in the manner directed by the Lords of the said Committee.

(a) See Railways Clauses Act, 1845, s. 47, *ante*, p. 360.

X. And whereas it is expedient that further provision be made for the safety of the public in respect of the fences of railways; be it enacted, That all railway companies shall be under the same liability of obligation to erect, and to maintain and repair, good and sufficient fences throughout the whole of their respective lines, as they would have been if every part of such fences had been originally ordered to be made under an order of Railway companies to erect and maintain fences.

5 & 6 Vict. c. 55. justices by virtue of the provisions to that effect in the acts of Parliament relating to such railways respectively.

Disputes between connecting railways to be decided by the Board of Trade.

XI. And be it enacted, That where two or more railway companies whose railways have a common terminus or a portion of the same line of rails in common, or which form separate portions of one continued line of railway communication (a), shall not be able to agree upon arrangements for conducting at such common terminus, or at the point of junction between them, their joint traffic with safety to the public, it shall be lawful for the Lords of the said Committee, upon the application of either of the parties, to decide the questions in dispute between them, so far as the same relate to the safety of the public, and to order and determine whether the whole or what proportion of the expenses attending on such arrangements shall be borne by either of the parties respectively; and if any railway company shall refuse or wilfully neglect to obey any such order made upon or against such company by the Lords of the said Committee pursuant to this provision, such company shall forfeit to Her Majesty the sum of twenty pounds per day for every day during which such refusal or neglect shall continue; and every such penalty may be recovered in any of Her Majesty's Courts of Record, or in the Court of Session or in any of the sheriffs'-courts in *Scotland*.

(a) See as to the duty of railway companies to make arrangements for receiving and forwarding through traffic, without unreasonable delay, and without partiality, s. 2 of the Railway and Canal Traffic Act, 1854, (17 & 18 Vict. c. 86,) *post*, and p. 394, *ante*.

Powers of making branch communication with railways, and of entering upon them with locomotive engines, to be regulated by the Board of Trade.

XII. And whereas powers of laying down branch lines (a) opening into the ledges or flanches of main lines of railway, and of entering upon and passing along such main lines with carriages and waggons drawn by locomotive engines, or by other mechanical or animal power, and also powers to form roads or railways across existing railways on a level, have been given by various acts relative to railways to the owners or occupiers of lands adjoining the railway, and to other persons with their consent: And whereas experience has shown that the exercise of such powers without limitation would in many cases be attended with danger to the public using such railway; be it therefore enacted, That if, in the case of any railway on which passengers are conveyed by steam or other mechanical power, it shall appear to the Lords of the said Committee that such power as aforesaid cannot be so exercised without seriously endangering the public safety, and that an arrangement may be made with a due regard to existing rights of property, it shall be lawful for

What is a Passenger Railway—Level Crossings. xxvii

the Lords of the said Committee to order and direct that such powers shall only be exercised subject to such conditions as the Lords of the said Committee shall direct: Provided always, that no railway shall be considered a passenger railway if two-thirds or more of the gross annual revenue of such railway shall be derived from the carriage thereon of coals, ironstone, or other metals or minerals.

Defining a passenger railway.

(a) As to branch railways, see the Railways Clauses Act, 1845, s. 76, *ante*, p. 384, and the Railways Construction Facilities Act, 1864, (27 & 28 Vict. c. 121,) *post*.

XIII. And whereas in many cases railways have been made to cross turnpike roads, highways, and private roads and tramways on the level, and the companies to whom such railways belong would in some cases be willing, at their own expense, to carry such roads and tramways over or under such railways, by means of a bridge or archway, for the greater safety of the public, but have no authority so to do: And whereas it would promote the public safety if railway companies were enabled, under the sanction and authority of the Lords of the said Committee, to substitute bridges or archways for such level crossings as aforesaid; be it therefore enacted, That in all cases where any railway company shall be willing, at their own expense, to carry any turnpike road, highway, or private road or tramway over or under their railway by means of a bridge or arch in lieu of crossing the same on the level, it shall be lawful for the Lords of the said Committee, on the application of the said company, and after hearing the several parties interested, if it shall appear to the Lords of the said Committee that such level crossing endangers the public safety, and that the proposal of the company does not involve any violation of existing rights or interests without adequate compensation, to give the said company full power and authority for removing the danger at their own expense, either by building a bridge, or by such other arrangement as the nature of the case shall require, subject to such conditions as the Lords of the said Committee shall direct.

Alteration of dangerous level crossings (a).

(a) See s. 47 of the Railways Clauses Act, 1845, *ante*, and the Railways Clauses Act, 1863, ss. 5-8, *ante*.

XIV. And whereas it is essential for the public safety, and also for the proper maintenance of railways in a state of efficiency for the public service, that railway companies should have the power, in case of accidents or slips happening or being apprehended to their cuttings and embankments or other works, to enter upon the lands adjoining their respective railways, for the purpose of repairing or renewing the same, and to do such works as may be necessary for the purpose; be it therefore en-

Power for railway companies to enter upon adjoining lands to repair accidents.

5 & 6 Vict. c. 55. acted, That it shall be lawful for the Lords of the said Committee to empower any railway company, in case of any accident or slip happening or being apprehended to any cutting, embankment, or other work belonging to them, to enter upon any lands adjoining their railway for the purpose of repairing or preventing such accident, and to do such works as may be necessary for the purpose: Provided always, that in case of necessity it shall be lawful for any railway company to enter upon such lands and do such works as aforesaid, without having obtained the previous sanction of the Lords of the said Committee; but in every such case such railway company shall, within forty-eight hours after such entry, make a report to the Lords of the said Committee, specifying the nature of such accident or apprehended accident, and of the works necessary to be done, and such powers shall cease and determine if the Lords of the said Committee shall, after considering the said report, certify that their exercise is not necessary for the public safety: Provided also, that such works shall be as little injurious to the said adjoining lands as the nature of the accident or apprehended accident will admit of, and shall be executed with all possible despatch; and full compensation shall be made to the owners and occupiers of such lands for the loss or injury or inconvenience sustained by them respectively by reason of such works, the amount of which compensation, in case of any dispute about the same, shall be settled in the same manner as cases of disputed compensation are directed to be settled by the acts relating to the railway on which such works may become necessary: Provided always, that no land shall be taken permanently by any railway company for such works without a certificate from the Lords of the said Committee as hereinafter described.

Compulsory powers of taking land for the purposes of railways extended, where thought necessary for safety by the Board of Trade.

XV. And whereas by various acts relating to railways compulsory powers are given to railway companies of purchasing and taking lands for the construction of such railways, and it is provided that such compulsory powers shall not be exercised after the expiration of certain limited periods from the passing of the said acts: and whereas it is sometimes found necessary for the public safety that additional land should be taken after the expiration of such periods for the purpose of giving increased width to the embankments and inclination to the slopes of railways, or for making approaches to bridges or archways, or for doing such works for the repair or prevention of accidents as are hereinbefore described; be it therefore enacted, That, in every case in which the Lords of the said Committee shall certify that the public safety requires additional land to be taken by any railway company for such purposes as aforesaid, the com-

Extension of Time—Weight of Carriages. xxix

pulsory powers of purchasing and taking land contained in the act or acts of such railway company, together with all the clauses and provisions relative thereto, shall, as regards such portion or portions of land as are mentioned in the certificate of the Lords of the said Committee, revive and be in full force for such further period as shall be mentioned in such certificate: Provided always, that any railway company applying to the Lords of the said Committee for any such certificate shall give fourteen days' notice in writing, in the manner prescribed by the act or acts of such company for serving notices on landowners, of their intention to make such application to all the parties interested in such lands, or such of them as shall be known to the company, and shall state in such notice the particulars of the lands required; and if any of such parties interested shall apply within the said period of fourteen days to the Lords of the said Committee, such party shall be heard by them before any such certificate is given: Provided also, that where any such application shall have been made by any railway company to the Lords of the said Committee, upon which application any such certificate shall have been refused, the directors of such railway company shall, if required by the Lords of the said Committee, repay to the party resisting such application any expenses which he or they may have incurred in resisting such application.

XVI. And whereas by various acts relating to railways it is enacted, that no carriage or waggon shall carry or bear at any one time upon the railway (including the weight of such carriage) more than four tons, and experience has shown that it is in many cases more conducive to safety to use a heavier description of carriage or waggon upon railways than was originally contemplated; be it therefore enacted, That every provision contained in any such act or acts respectively limiting the weight to be carried or borne at any one time in any carriage or waggon upon any railway (including the weight of such carriage or waggon) to four tons, shall be and the same is hereby repealed, and that, notwithstanding anything in any act contained, it shall be lawful for any railway company to use and to permit to be used upon any railway carriages or waggons carrying or bearing (including the weight of such carriage) a greater weight than four tons, subject to such regulations as may from time to time be made and be in force pursuant to any act or acts of Parliament already or hereafter to be passed in that behalf.

XVII. And whereas by the said recited act for regulating railways provision is made for the punishment of servants of railway companies guilty of misconduct, and it is expedient to

5 & 6 Vict. c. 55.

Carriages of greater weight than four tons may be used on railways.

Punishment of persons employed on railways guilty of misconduct.

5 & 6 VICT. c. 55. extend such provision ; be it enacted, That it shall be lawful for any officer or agent of any railway company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine-driver, wagon-driver, guard, porter, servant, or other person employed by the said or by any other railway company, or by any other company or person, in conducting traffic upon the railway belonging to the said company, or in repairing and maintaining the works of the said railway, who shall be found drunk while so employed upon the said railway, who shall commit any offence against any of the bye-laws, rules, or regulations of the said company, or who shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon such railway or the works thereof respectively shall be or might be injured or endangered, or whereby the passage of any engines, carriages, or trains shall be or might be obstructed or impeded, and to convey such engine-driver, guard, porter, servant, or other person so offending, or any person counselling, aiding, or assisting in such offence, with all convenient despatch, before some justice of the peace for the place within which such offence shall be committed, without any other warrant or authority than this act ; and every such person so offending, and every person counselling, aiding, or assisting therein, as aforesaid, shall, when convicted upon the oath of one or more credible witness or witnesses before such justice as aforesaid, (who is hereby authorised and required, upon complaint to him made upon oath, without information in writing, to take cognisance thereof, and to act summarily in the premises,) in the discretion of such justice, be imprisoned, with or without hard labour, for any term not exceeding two calendar months, or, in the like discretion of such justice, shall for every such offence forfeit to Her Majesty any sum not exceeding ten pounds, and in default of payment thereof, shall be imprisoned, with or without hard labour, as aforesaid, for such period, not exceeding two calendar months, as such justice shall appoint, such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to the next ensuing Court of Quarter Sessions in the usual manner.

Sheriffs to have jurisdiction in Scotland.

XVIII. And be it enacted, That in all cases in which by the present or the said recited act for regulating railways it is provided that offenders shall be taken before one or more justices of the peace for the place within which the offence was committed, it shall be lawful, in case the offence is committed in *Scotland*, to take such offenders before the sheriff of the county, or other magistrate acting for the district within which such

offence shall be committed, or where such offender shall be apprehended, without any warrant or authority other than this act; and such sheriff or magistrate is hereby empowered and required, on the application of the railway company, to proceed in all respects as if the words "Sheriff or Magistrate" had been substituted for the word "Justice" in the said acts, and shall be entitled summarily, and without a jury, to execute the powers thereby and hereby committed to him.

XIX. And be it enacted, That all notices, returns, and other documents required by this act or by the said recited act to be given to or laid before the Lords of the said Committee shall be delivered at or sent by the post to the office of the Lords of the said Committee; and all notices, requisitions, orders, regulations, appointments, certificates, certified copies, and other documents in writing, signed by one of the secretaries of the said Committee, or by some officer appointed for that purpose by the Lords of the said Committee, and purporting to be made by the Lords of the said Committee, shall, for the purposes of this and of the said recited act, be deemed to have been made by the Lords of the said Committee, and that in the absence of evidence to the contrary, without proof of the authority of the person signing the same or of the signature thereto; and service of the same at one of the terminal offices of any railway company on the secretary or clerk of the said company, or by sending the same by post addressed to him at such office, shall be deemed good service upon the said company.

Communications to and from the Board of Trade, and service of notices, &c., on railway company.

XX. And be it enacted, That whenever it shall be necessary to move any of the officers or soldiers of Her Majesty's forces of the line, ordnance corps, marines, militia, or the police force, by any railway, the directors thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessaries and things, to be conveyed at the usual hours of starting, at such prices or upon such conditions as may from time to time be contracted for between the Secretary at War and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities (a).

Railway companies shall convey military and police forces at prices to be settled.

(a) Amended by s. 12 of 7 & 8 Vict. c. 85, *post*.

XXI. And be it enacted, That whenever the word "railway" is used in this or the said recited act it shall be construed to apply to all railways used or intended to be used for the conveyance of passengers in or upon carriages drawn or impelled by

Meaning of the words "railway" and "company."

5 & 6 Vict. c. 55. the power of steam or by any other mechanical power; and whenever the word "company" is used in this or in the said recited act it shall be construed to extend to and include the proprietors for the time being of any such railway, whether a body corporate or individuals, and their lessees, executors, administrators, and assigns, unless in either of the above cases the subject or context be repugnant to such construction.

Application of penalties.

XXII. And be it enacted, That all penalties under this act, for the application of which no special provision is made, shall be recovered in the name and for the use of Her Majesty, in the manner provided by the said recited act for regulating railways.

Act may be repealed this session.

XXIII. And be it enacted, That this act may be amended or repealed by any act to be passed in the present session of Parliament.

5 & 6 VICT. c. 79.

An Act to repeal the Duties payable on Stage Carriages and on Passengers conveyed upon Railways, &c.—[5th August 1842.]

Accounts of tolls for duty.

S. 4. *Accounts to be kept of money received for the conveyance of passengers on railways; and of money paid by persons conveying such passengers to the proprietors of railways on account of fares received or for the use of the railway. Copies of the accounts to be delivered to the Commissioners of Stamps and Taxes, verified by affidavit, and duties paid thereon, monthly (a).*

(a) By s. 9 of 7 & 8 Vict. c. 85 (*post*), no tax is to be levied upon the receipts of any railway company from the conveyance of passengers or fares not exceeding one penny for each mile by any cheap train under the act.

S. 5. *Proprietors of railways to deduct the duty on the sums paid over to other proprietors.*

S. 6. *Books containing any such accounts to be open to inspection of Officers of Stamps. Penalty for refusing to permit inspection.*

S. 7. *Railway proprietors to give bond for securing the duties.*

7 & 8 VICT. c. 85.

An Act to attach certain Conditions to the construction of future Railways authorised or to be authorised by any act of the present or succeeding sessions of Parliament; and for other purposes in relation to Railways.—[9th August 1844.]*

WHEREAS it is expedient that the concession of powers for the establishment of new lines of railway should be subjected to such conditions as are hereinafter contained for the benefit of the public: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That if at any time after the end of twenty-one years from and after the first day of January next after the passing of any act of the present or of any future session of Parliament for the construction of any new line of passenger railway, whether such new line be a trunk, branch, or junction line, and whether such new line be constructed by a new company incorporated for the purpose or by any existing company, the clear annual profits divisible upon the subscribed and paid-up capital stock of the said railway, upon the average of the three then last preceding years, shall equal or exceed the rate of ten pounds for every hundred pounds of such paid-up capital stock, it shall be lawful for the Lords Commissioners of Her Majesty's Treasury, subject to the provisions hereinafter contained, upon giving to the said company three calendar months' notice in writing of their intention so to do, to revise the scale of tolls, fares, and charges limited by the act or acts relating to the said railway, and to fix such new scale of tolls, fares, and charges, applicable to such different classes and kinds of passengers, goods, and other traffic on such railway, as in the judgment of the said Lords Commissioners, assuming the same quantities and kinds of traffic to continue, shall be likely to reduce the said divisible profits to the said rate of ten pounds in the hundred: Provided always, that no such revised scale shall take effect, unless accompanied by a guarantee to subsist

If, after twenty-one years from the passing of the act for the construction of any future railway, the profits shall exceed £10 per cent., the treasury may revise the scale of tolls, and fix a new scale.

Proviso.

* And tramways in Ireland; 23 & 24 Vict. c. 152 (Tramways (Ireland) Act, Schedule C,) and railways constructed under the Railways Construction Facilities Act, 1864, (27 & 28 Vict. c. 121,) *post*.

7 & 8 Vict. c. 85. as long as any such revised scale of tolls, fares, and charges shall be in force, that the said divisible profits, in case of any deficiency therein, shall be annually made good to the said rate of ten pounds for every hundred pounds of such capital stock: Provided also, that such revised scale shall not be again revised or such guarantee withdrawn, otherwise than with the consent of the company, for the further period of twenty-one years.

Option of purchase of future railways.

Proviso.

II. And be it enacted, That whatever may be the rate of divisible profits on any such railway it shall be lawful for the said Lords Commissioners, if they shall think fit, subject to the provisions hereinafter contained, at any time after the expiration of the said term of twenty-one years, to purchase any such railway, with all its hereditaments, stock, and appurtenances, in the name and on behalf of Her Majesty, upon giving to the said company three calendar months' notice in writing of their intention, and upon payment of a sum equal to twenty-five years' purchase of the said annual divisible profits, estimated on the average of the three then next preceding years: Provided that if the average rate of profits for the said three years shall be less than the rate of ten pounds in the hundred, it shall be lawful for the company, if they shall be of opinion that the said rate of twenty-five years' purchase of the said average profits is an inadequate rate of purchase of such railway, reference being had to the prospects thereof, to require that it shall be left to arbitration, in case of difference, to determine what (if any) additional amount of purchase-money shall be paid to the said company: Provided also, that such option of purchase shall not be exercised, except with the consent of the company, while any such revised scale of tolls, fares, and charges shall be in force.

Existing railways not to be subjected to the options.

III. Provided always, and be it enacted, That the option of revision or purchase shall not be applied to any railway made or authorised to be made by any act previous to the present session; and that no branch or extension of less than five miles in length of any such line of railway shall be taken to be a new railway within the provisions of this act; and that the said option of purchase shall not be exercised as regards any branch or extension of any railway, without including such railway in the purchase, in case the proprietors thereof shall require that the same be so included.

Reservation to Parliament of the consideration of future policy in regard to the said options.

IV. And whereas it is expedient that the policy of revision or purchase should in no manner be prejudged by the provisions of this act, but should remain for the future consideration of

the legislature, upon grounds of general and national policy : 7 & 8 VICT. c. 85.
And whereas it is not the intention of this act that under the said powers of revision or purchase, if called into use, the public resources should be employed to sustain an undue competition against any independent company or companies ; be it enacted, That no such notice as hereinbefore mentioned, whether of revision or purchase, shall be given until provision shall have been made by Parliament, by an act or acts to be passed in that behalf, for authorising the guarantee or the levy of the purchase-money hereinbefore mentioned, as the case may be, and for determining, subject to the conditions hereinbefore mentioned, the manner in which the said options or either of them shall be exercised ; and that no bill for giving powers to exercise the said options, or either of them, shall be received in either House of Parliament unless it be recited in the preamble to such bill that three months' notice of the intention to apply to Parliament for such powers has been given by the said Lords Commissioners to the company or companies to be affected thereby.

V. And be it enacted, That, from and after the commencement of the period of three years next preceding the period at which the option of revision or purchase becomes available, full and true accounts shall be kept of all sums of money received and paid on account of any railway within the provisions hereinbefore contained, (distinguishing, if the said railway shall be a branch railway or one worked in common with other railways, the receipts, and giving an estimate of the expenses on account of the said railway, from those on account of the trunk, line, or other railways,) by the directors of the company to whom such railway belongs, or by whom the same may be worked ; and every such railway company shall once in every half-year during the said period of three years cause a half-yearly account in abstract to be prepared, showing the total receipt and expenditure on account of the said railway for the half-year ending the thirtieth day of June and the thirty-first day of December respectively, or such other convenient days as shall in each case be directed by the said Lords Commissioners, under distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified under the hands of two or more directors of the said railway company, and shall send a copy of the said account to the said Lords Commissioners on or before the last days of August and February respectively, or such other days as shall in each case be directed by the said Lords Commissioners, in each year ; and it shall be lawful for the said Lords Commissioners, if and when they shall

Accounts to be kept, and to be open to inspection.

7 & 8 Vict. c. 85. think fit, to appoint any proper person or persons to inspect the accounts and books of the said company during the said period of three years; and it shall be lawful for any person so authorised, at all reasonable times, upon producing his authority, to examine the books, accounts, vouchers, and other documents of the company, at the principal office or place of business of the company, and to take copies or extracts therefrom.

Companies to
provide one
cheap train each
way daily (a).

VI. And whereas it is expedient to secure to the poorer class of travellers the means of travelling by railway at moderate fares, and in carriages in which they may be protected from the weather; be it enacted, That on and after the several days hereinafter specified, all passenger railway companies which shall have been incorporated by any act of the present session, or which shall be hereafter incorporated, or which by any act of the present or any future session have obtained or shall obtain, directly or indirectly, any extension or amendment of the powers conferred on them respectively by their previous acts, or have been or shall be authorised to do any act unauthorised by the provisions of such previous acts, shall, by means of one train at the least to travel along their railway from one end to the other of each trunk, branch, or junction line belonging to or leased by them, so long as they shall continue to carry other passengers over such trunk, branch, or junction line, once at the least each way on every week day, except Christmas day and Good Friday, (such exception not to extend to *Scotland*.) provide for the conveyance of third-class passengers to and from the terminal and other ordinary passenger stations of the railway, under the obligations contained in their several acts of Parliament, and with the immunities applicable by law to carriers of passengers by railway; and also under the following conditions; (that is to say,)

Such train shall start at an hour to be from time to time fixed by the directors, subject to the approval of the Lords of the Committee of Privy Council for Trade and Plantations:

Such train shall travel at an average rate of speed not less than twelve miles an hour for the whole distance travelled on the railway, including stoppages:

Such train shall, if required, take up and set down passengers at every passenger station which it shall pass on the line:

The carriages in which passengers shall be conveyed by such train shall be provided with seats, and shall be protected from the weather, in a manner satisfactory to the Lords of the said Committee:

The fare or charge for each third-class passenger by such train shall not exceed one penny for each mile travelled: 7 & 8 Vict. c. 85.

Each passenger by such train shall be allowed to take with him half a hundred-weight of luggage, not being merchandise or other articles carried for hire or profit, without extra charge; and any excess of luggage shall be charged by weight, at a rate not exceeding the lowest rate of charge for passengers' luggage by other trains:

Children under three years of age accompanying passengers by such train shall be taken without any charge, and children of three years and upwards, but under twelve years of age, at half the charge for an adult passenger:

And with respect to all railways subject to these obligations which shall be open on or before the first day of November next, these obligations shall come into force on the said first day of November; and with respect to all other railways subject to these obligations, they shall come into force on the day of opening of the railway, or the day after the last day of the session in which the act shall be passed by reason of which the company will become subject thereunto, which shall first happen.

(a) Amended by 21 & 22 Vict. c. 75, *post*.

VII And be it enacted, That if any railway company shall refuse or wilfully neglect to comply with the provisions of this act as to the said cheap trains within a reasonable time, or shall attempt to evade the operation of such order, such company shall forfeit to Her Majesty a sum not exceeding twenty pounds for every day during which such refusal, neglect, or evasion shall continue. Penalty for non-compliance.

VIII. Provided always, and be it enacted, That, except as to the amount of fare or charge for each passenger by such cheap trains, which shall in no case exceed the rates hereinbefore in such case provided, the Lords of the said Committee shall have a discretionary power, upon the application of any railway company, of dispensing with any of the conditions hereinbefore required in regard to the conveyance of passengers by such cheap trains as aforesaid, in consideration of such other arrangements, either in regard to speed, covering from the weather, seats, or other particulars, as to the Lords of the said Committee shall appear more beneficial and convenient for the passengers by such cheap trains under the circumstances of the case, and shall be sanctioned by them accordingly; and any railway company which shall conform to such other conditions as shall be so sanctioned by the Lords of the said Committee shall not be liable Board of Trade to have a discretionary power of allowing alternative arrangements.

7 & 8 Vict. c. 85. to any penalty for not observing the conditions which shall have been so dispensed with by the Lords of the said Committee in regard to the said cheap trains and the passengers conveyed thereby.

When no tax to be levied.

IX. And be it enacted, That no tax shall be levied upon the receipts of any railway company from the conveyance of passengers at fares not exceeding one penny for each mile by any such cheap train as aforesaid (a).

(a) See 26 & 27 Vict. c. 34, s. 14.

Where companies run trains on the Sunday, cheap trains to be likewise provided.

X. And be it enacted, That whenever any railway company subject to the hereinbefore mentioned obligation of running cheap trains shall, from and after the days hereinbefore specified on which the said obligation is to accrue, run any train or trains on Sundays for the conveyance of passengers, it shall, under the obligations contained in its act or acts of Parliament, and with the immunities applicable by law to carriers of passengers by railway, by such train each way, on every Sunday, as shall stop at the greatest number of stations, provide sufficient carriages for the conveyance of third-class passengers at the terminal and other stations at which such Sunday train may ordinarily stop; and the fare or charge for each third-class passenger by such train shall not exceed one penny for each mile travelled.

Railway companies to afford additional facilities for the transmission of the mails.
1 & 2 Vict. c. 98.

XI. And whereas, by an act passed in the second year of the reign of Her Majesty, intituled, "An Act to provide for the Conveyance of the Mails by Railways" (a), provision was made for the transmission of the mails by railway, and it is expedient that such provision should be extended; be it enacted, That it shall be lawful for the Postmaster-General to require, in the manner and subject to the conditions as to payment for service performed prescribed by the said act, that the mails be forwarded upon any such railway as is hereinbefore last mentioned at any rate of speed which the Inspector-General of railways for the time being shall certify to be safe, not exceeding twenty-seven miles in the hour including stoppages; and it shall be also lawful for the Postmaster-General to send any mail guards with bags not exceeding the weight of luggage allowed to any other passenger (or subject to the general rules of the company for any excess of that weight) by any trains other than a mail train, upon the same conditions as any other passenger; provided that in such last-mentioned case nothing herein or in the last-recited act contained shall be construed to authorise the Postmaster-General to require the conversion of a regular mail train into an ordinary train, or to exercise any control over the

company in respect of any ordinary train, nor shall the company be responsible for the safe custody or delivery of any mail bags so sent. 7 & 8 Vict. c. 85.

(a) See the act in the Appendix, *ante*, p. v.

XII. And whereas by an act passed in the sixth year of the reign of Her Majesty, intituled "An Act for the better Regulation of Railways, and for the Conveyance of Troops (a), it was among other things enacted, that whenever it shall be necessary to move any of the officers or soldiers of Her Majesty's forces of the line, ordnance corps, marines, militia, or the police force, by any railway, the directors thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessaries and things, to be conveyed at the usual hours of starting, at such prices or upon such conditions as may from time to time be contracted for between the Secretary at War and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities: And whereas it is expedient to amend such provision in regard to the prices and conditions of conveyance by any new railway, or any railway obtaining new powers from Parliament; be it enacted, That all railway companies which have been or shall be incorporated by any act of the present or any future session, or which by any act of the present or any future session shall have obtained or shall obtain any extension or amendment of the powers conferred by their previous acts or any of them, or have been or shall be authorised to do any act unauthorised by the provisions of such previous acts, shall be bound to provide such conveyance as aforesaid for the said military, marine, and police forces, at fares not exceeding twopence per mile for each commissioned officer proceeding on duty, such officer being entitled to conveyance in a first-class carriage, and not exceeding one penny for each mile for each soldier, marine, or private of the militia or police force, and also for each wife, widow, or child above twelve years of age of a soldier entitled by act of Parliament or by competent authority to be sent to their destination at the public expense, children under three years of age so entitled being taken free of charge, and children of three years of age or upwards, but under twelve years of age, so entitled, being taken at half the price of an adult; and such soldiers, marines, and privates of the militia or police force, and their wives, widows, and children so entitled, being conveyed in carriages which shall be provided with seats, with sufficient space for the reasonable accommodation of the persons conveyed, and which shall be protected against the weather; provided that

Certain companies to convey military and police forces at certain charges.
5 & 6 Vict. c. 55.

7 & 8 Vict. c. 85. every officer conveyed shall be entitled to take with him one hundredweight of personal luggage without extra charge, and every soldier, marine, private, wife, or widow shall be entitled to take with him or her half a hundredweight of personal luggage without extra charge, all excess of the above weights of personal luggage being paid for at the rate of not more than one halfpenny per pound, and all public baggage, stores, arms, ammunition, and other necessities and things, (except gunpowder and other combustible matters, which the company shall only be bound to convey at such prices and upon such conditions as may be from time to time contracted for between the Secretary at War and the company,) shall be conveyed at charges not exceeding twopence per ton per mile, the assistance of the military or other forces being given in loading and unloading such goods.

(a) See s. 20 of 5 & 6 Vict. c. 55, in the Appendix, *ante*, p. xxxi.

Companies to allow lines of electrical telegraph to be established.

XIII. And whereas electrical telegraphs have been established on certain railways, and may be more extensively established hereafter, and it is expedient to provide for their due regulation; be it enacted, That every railway company, on being required so to do by the Lords of the said Committee, shall be bound to allow any person or persons authorised by the Lords of the said Committee, with servants and workmen, at all reasonable times, to enter into or upon their lands, and to establish and lay down upon such lands adjoining the line of such railway a line of electrical telegraph for Her Majesty's service, and to give to him and them every reasonable facility for laying down the same, and for using the same for the purpose of receiving and sending messages on Her Majesty's service, subject to such reasonable remuneration to the company as may be agreed upon between the company and the Lords of the said Committee, or in case of disagreement, as may be settled by arbitration: Provided always, that, subject to a prior right of use thereof for the purposes of Her Majesty, such telegraph may be used by the company for the purposes of the railway, upon such terms as may be agreed upon between the parties, or, in the event of difference, as may be settled by arbitration.

Electrical telegraph established by private parties to be open to the public.

XIV. And be it enacted, That where a line of electrical telegraph shall have been established upon any railway by the company to whom such railway belongs, or by any company, partnership, person or persons, otherwise than exclusively for Her Majesty's service, or exclusively for the purposes of the railway, or jointly for both, the use of such electrical telegraph, for the purpose of receiving and sending messages, shall, subject to the

prior right of use thereof for the service of Her Majesty and for the purposes of the company, and subject also to such equal charges and to such reasonable regulations as may be from time to time made by the said railway company, be open for the sending and receiving of messages by all persons alike, without favour or preference.

XV. And whereas by an act passed in the fourth year of the reign of Her Majesty, intituled, "An Act to Regulate Railways," power is given to the Lords of the said Committee to appoint any proper person or persons to inspect any railway, and the stations, works, and buildings, and the engines and carriages belonging thereto; and in order to carry the provisions of this act into execution, it is expedient that the said power be extended; be it enacted, That the said power given to the Lords of the said Committee of appointing proper persons to inspect railways shall extend to authorise the appointment by the Lords of the said Committee of any proper person or persons, for such purposes of inspection as are by the said act authorised, and also for the purpose of enabling the Lords of the said Committee to carry the provisions of this and of the said act and of any general act relating to railways into execution; and that so much of the last-recited act as provides that no person shall be eligible to the appointment as inspector who shall, within one year of his appointment, have been a director, or have held any office of trust or profit under any railway company, shall be repealed: Provided always, that no person to be appointed as aforesaid shall exercise any powers of interference in the affairs of the company.

XVI. And whereas by the said act of the fourth year of the reign of Her Majesty, intituled, "An Act for Regulating Railways," it is among other things enacted, that whenever it shall appear to the Lords of the said Committee that any of the provisions of the several acts of Parliament regulating any railway companies, or the provisions of that act, have not been complied with on the part of any of the said companies or any of their officers, and that it would be for the public advantage that the due performance of the same should be enforced, the Lords of the said Committee shall certify the same to Her Majesty's Attorney-General for *England* or *Ireland*, or to the Lord Advocate for *Scotland*, as the case may require; and thereupon the said Attorney-General or Lord Advocate shall, by information, or by action, bill, plaint, suit at law or in equity, or other legal proceeding, (as the case may require,) proceed to recover such penalties and forfeitures, or otherwise to enforce the due

7 & 8 Vict. c. 85.

Appointment of
inspectors by
Board of Trade.
3 & 4 Vict. c. 97.

Repealing provi-
sion of 3 & 4
Vict. c. 97.

7 & 8 Vict. c. 85. performance of the said provisions, by such means as any person aggrieved by such noncompliance, or otherwise authorised to sue for such penalties, might employ under the provisions of the said acts : Provided always, that no such certificate as aforesaid shall be given by the Lords of the said Committee until twenty-one days after they shall have given notice of their intention to give the same to the company against or in relation to whom they shall intend to give the same : And whereas it is expedient that more effectual provision should be made, not only for enforcing a compliance on the part of railway companies with the provisions of their acts, but also for restraining railway companies from performing acts unauthorised by such provisions ; be it enacted, That so much of the said act as is hereinbefore recited shall be repealed.

If railway companies contravene or exceed the provisions of their acts, or of any general act, the Board of Trade to certify the same to the Attorney-General, &c., who shall proceed against them.

XVII. And be it enacted, That whenever it shall appear to the Lords of the said Committee that any of the provisions of the several acts of Parliament regulating any railway company, or the provisions of this act or of any general act relating to railways, have not been complied with on the part of any railway company or any of its officers, or that any railway company has acted or is acting in a manner unauthorised by the provisions of the act or acts of Parliament relating to such railway, or in excess of the powers given and objects defined by the said act or acts, and it shall also appear to the Lords of the said Committee that it would be for the public advantage that the company should be restrained from so acting, the Lords of the said Committee shall certify the same to Her Majesty's Attorney-General for *England or Ireland*, or to the Lord Advocate for *Scotland*, as the case may require ; and thereupon the said Attorney-General or Lord Advocate shall, in case such default of the railway company shall consist of noncompliance with the provisions of the act or acts relating thereto or of this act, or of any general act relating to railways, proceed by information, or by action, bill, plaint, suit at law or in equity, or other legal proceeding, as the case may require, to recover such penalties and forfeitures, or otherwise to enforce the due performance of the said provisions, by such means as any person aggrieved by such noncompliance, or otherwise authorised to sue for such penalties, might employ under the provisions of the said acts ; and in case the default of the railway company shall consist in the commission of some act or acts unauthorised by law, then the said Attorney-General or Lord Advocate, upon receiving such certificate as aforesaid, shall proceed by suit in equity, or such other legal proceeding as the nature of the case may require, to obtain an injunction or order (which the judge

in equity or other judge to whom the application is made shall be authorised and required to grant, if he shall be of opinion that the act or acts of the railway company complained of is or are not authorised by law) to restrain the company from acting in such illegal manner, or to give such other relief as the nature of the case may require.

XVIII. Provided always, and be it enacted, That no such certificate as aforesaid shall be given by the Lords of the said Committee until twenty-one days after they shall have given notice to the company against or in relation to whom they shall have intended to give such certificate of their intention to give such certificate; and that no legal proceedings shall be commenced under the authority of the Lords of the said Committee against any railway company for any offence against any of the several acts relating to railways or this act, or any general act relating to railways, except upon such certificate of the Lords of the said Committee as aforesaid, and within one year after such offence shall have been committed.

7 & 8 VICT. c. 85

Notice to be given to the company.

Prosecutions to be under the sanction of the Board of Trade, and within one year after the offence.

XIX. And whereas many railway companies have borrowed money in a manner unauthorised by their acts of incorporation or other acts of Parliament relating to the said companies, upon the security of loan notes or other instruments purporting to give a security for the repayment of the principal sums borrowed at certain dates, and for the payment of interest thereon in the meantime: And whereas such loan notes or other securities issued otherwise than under the provision of some act or acts of Parliament have no legal validity, and it is expedient that the issue of such illegal securities should be stopped; but such loan notes or other securities having been issued and received in good faith as between the borrower and lender, and for the most part for the lawful purposes of the undertaking, and in ignorance of their legal invalidity, it is expedient to confirm such as have been already issued; be it enacted, That from and after the passing of this act any railway company issuing any loan note or other negotiable or assignable instrument purporting to bind the company as a legal security for money advanced to the said railway company otherwise than under the provisions of some act or acts of Parliament authorising the said railway company to raise such money and to issue such security, shall for every such offence forfeit to Her Majesty a sum equal to the sum for which such loan note or other instrument purports to be such security: Provided always, that any company may renew any such loan note or other instrument issued by them prior to the passing of this act for any period or periods not exceeding five years from the passing of this act.

Issue of loan notes and other illegal securities by railway companies prohibited.

Loan notes already issued may be renewed.

7 & 8 Vict. c. 85.

Loan notes
already issued to
be paid when
due.

XX. And be it enacted, That where any railway company, before the twelfth day of July one thousand eight hundred and forty-four, shall have issued or contracted to issue any such loan notes or other unauthorised instruments, the company may and shall pay off such loan notes or other instruments as the same may fall due, subject as hereinbefore provided; and until the same shall be so paid off the said loan notes or other instruments shall entitle the holders thereof to the payment by the company of the principal sum and interest thereby agreed to be paid.

Register of loan
notes.

XXI. And be it enacted, That a register of all such loan notes or other instruments shall be kept by the secretary; and such register shall be open, without fee or reward, at all reasonable times, to the inspection of any shareholder or auditor of the undertaking, and of every person interested in any such loan note or other instrument, desirous of inspecting the same.

Remedy for re-
covery of tithe
rent charged on
railway land.

XXII. And whereas the remedies now in force for the recovery of tithe commutation rent-charges are in many instances ineffectual for such parts thereof as are charged upon lands taken for the purposes of a railway, and it is therefore expedient to extend the said remedies when the said rent-charges may have been duly apportioned; be it enacted, That in all cases in which any such rent-charge, or part of any rent-charge, has been or hereafter shall be duly apportioned under the provisions of the acts for the commutation of tithes in *England and Wales*, upon lands taken or purchased by any railway company for the purposes of such company or upon any part of such lands, it shall be lawful for every person entitled to the said rent-charge or parts of such rent-charge, in case the same has been or shall be in arrear and unpaid for the space of twenty-one days next after any half-yearly day fixed for the payment thereof, to distrain for all arrears of the said rent-charge upon the goods, chattels, and effects of the said company, whether on the land charged therewith, or any other lands, premises, or hereditaments of such company, whether situated in the same parish or elsewhere, and to dispose of the distress when taken, and otherwise to demean himself in relation thereto, as any landlord may for arrears of rent reserved on a lease for years: Provided always, that nothing herein contained shall give or be construed to give a legal right to such rent-charge, when but for this act such rent-charge was not or could not be duly apportioned.

Communications
to and from
Board of Trade,

XXIII. And it be enacted, That all notices, requisitions, orders, regulations, appointments, certificates, certified copies,

and other documents in writing, signed by some officer appointed for that purpose by the Lords of the said Committee, shall for the purposes of this act be deemed to have been made by the Lords of the said Committee; and all certificates of anything done by the Lords of the said Committee in relation to this act, and certified copies of the minutes of proceedings or correspondence of the Lords of the said Committee in relation thereto, signed by such officer, shall be deemed sufficient evidence thereof, and that in the absence of evidence to the contrary, without proof of the authority of the person signing the same or of the signature thereto, and service of the same at one of the principal offices of any railway company on the secretary or clerk of the said company, or by sending the same by post, addressed to him at such office, shall be deemed good service upon the said company; and all notices, returns, and other documents required by this act to be given to or laid before the Lords of the said Committee, shall be delivered at or sent by post addressed to the office of the Lords of the said Committee.

7 & 8 VICT. c. 85.
service of no-
tices, &c.

XXIV. And be it enacted, That all penalties under this act for the application of which no special provision is made shall be recovered in the name and for the use of Her Majesty, and may be recovered in any of Her Majesty's Courts of Record, or in the Court of Session or in any of the sheriff-courts in *Scotland*.

Penalties.

XXV. And be it enacted, That where the word "railway" is used in this act it shall be construed to extend to railways constructed under the powers of any act of Parliament; and when the words "passenger railway" are used in this act, they shall be construed to extend to railways constructed under the powers of any act of Parliament upon which one-third or more of the gross annual revenue is derived from the conveyance of passengers by steam or other mechanical power; and whenever the word "company" is used in this act it shall be construed to extend to include the proprietors for the time being of any such railway; and that where a different sense is not expressly declared, or does not appear by the context, every word importing the singular number or the masculine gender shall be taken to include females as well as males, and several persons and things as well as one person or thing.

Interpretation of
act.

XXVI. And be it enacted, That this act may be amended or repealed by any act to be passed in this session of Parliament.

Act may be
amended this ses-
sion.

9 VICT. C. 20.

An Act to amend an Act of the second year of her present Majesty, for providing for the Custody of certain Moneys paid, in pursuance of the Standing Orders of either House of Parliament, by subscribers to works or undertakings to be effected under the authority of Parliament.—[18th June 1846.]

1 & 2 Vict. c.
117.

Recited act
repealed.
Moneys already
paid in to be
dealt with as
directed by
former act.

Authority to
deposit.

WHEREAS an act was passed in the second year of the reign of her present Majesty Queen Victoria, intituled, "An Act to provide for the custody of certain moneys paid, in pursuance of the Standing Orders of either House of Parliament, by subscribers to works or undertakings to be effected under the authority of Parliament:" And whereas it is expedient that the said act should be repealed, and should be re-enacted, with such modifications, extensions, and alterations as after mentioned: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the said act shall be and is hereby repealed: Provided always, That all acts done under the provisions of the said act shall be good, valid, and effectual to all intents and purposes, and that all sums of money paid under the provisions of the said act shall be dealt with in all respects as if this act had not been passed.

II. And be it enacted, That in all cases in which any sum of money is required by any standing order of either House of Parliament, either now in force or hereafter to be in force, to be deposited by the subscribers to any work or undertaking which is to be executed under the authority of an act of Parliament, if the director or person or directors or persons having the management of the affairs of such work or undertaking, not exceeding five in number, shall apply to one of the clerks in the office of the clerk of the Parliaments with respect to any such money required by any standing order of the Lords spiritual and temporal in Parliament assembled, or to one of the clerks of the private bill office of the House of Commons with respect to any such money required by any standing order of the Commons in Parliament assembled, to be deposited, it shall be lawful for the clerk so applied to, by warrant or order under his hand,

to direct that such sum of money shall be paid in manner hereinafter mentioned; (that is to say,) into the Bank of *England*, in the name and with the privity of the Accountant-General of the Court of Chancery in *England*, if the work or undertaking in respect of which the sum of money is required to be deposited is intended to be executed in that part of the United Kingdom called *England*, or into any of the banks in *Scotland* established by act of Parliament or royal charter, in the name and with the privity of the Queen's Remembrancer of the Court of Exchequer in *Scotland*, at the option of the person or persons making such application as aforesaid, in case such work or undertaking is intended to be executed in that part of the United Kingdom called *Scotland*, or into the Bank of *Ireland*, in the name and with the privity of the Accountant-General of the Court of Chancery in *Ireland*, in case such work or undertaking is intended to be made or executed in that part of the United Kingdom called *Ireland*; and such warrant or order shall be a sufficient authority for the Accountant-General of the Court of Chancery in *England*, the Queen's Remembrancer of the Court of Exchequer in *Scotland*, and the Accountant-General of the Court of Chancery in *Ireland*, respectively, to permit the sum of money directed to be paid by such warrant or order to be placed to an account opened or to be opened in his name in the bank mentioned in such warrant or order.

9 VICT. C. 20.

III. And be it enacted, That it shall be lawful for the person or persons named in such warrant or order, or the survivors or survivor of them, to pay (a) the sum mentioned in such warrant or order into the bank mentioned in such warrant or order in the name and with the privity of the officer or person in whose name such sum shall be directed to be paid by such warrant or order, to be placed to his account there *ex parte* the work or undertaking mentioned in such warrant or order, pursuant to the method prescribed by any act or acts for the time being in force for regulating moneys paid into the said courts, and pursuant to the general orders of the said courts respectively, and without fee or reward; and every such sum so paid in, or the securities in or upon which the same may be invested as hereinafter mentioned, or the stocks, funds, or securities authorised to be transferred or deposited in lieu thereof as hereinafter mentioned, shall there remain until the same, with all interest and dividends, if any, accrued thereon, shall be paid out of such bank, in pursuance of the provisions of this act: Provided always, that in case any such director or person, directors or persons, having the management of any such proposed work or undertaking as aforesaid, shall have previously invested in the

Payment of
deposit.

9 Vict. c. 20.

three per centum consolidated or the three per centum reduced bank annuities, Exchequer bills (b), or other Government securities, the sum or sums of money required by any such standing order of either House of Parliament (c) as aforesaid to be deposited by the subscribers to any work or undertaking which is to be executed under the authority of an act of Parliament, it shall be lawful for the person or persons named in such warrant or order, or the survivors or survivor of them, to deposit such Exchequer bills or other Government securities in the bank mentioned in such warrant or order in the name and with the privity of the officer or person in whose name such sum shall by such warrant or order be directed to be paid, or to transfer such Government stocks or funds into the name of the officer or person; and such transfer or deposit shall be directed by such clerk of the office of the clerk of the Parliaments, or such clerk of the private bill office of the House of Commons, as the case may be, in lieu of payment of so much of the sum of money required to be deposited as aforesaid as the same Exchequer bills or other the Government stocks or funds will extend to satisfy at the price at which the same were originally purchased by the said person or persons, director or directors as aforesaid, such price to be proved by production of the broker's certificate of such original purchase.

(a) As to the borrowing of money by promoters for the purpose of making the required deposit, see *Scott v. Oakley*, 33 Bea. 501, 10 Jur. N. S. 431; 12 W. R. 728, 897.

(b) Exchequer bills were considered to fall within the description of Government securities in the corresponding section of the repealed act, 1 & 2 Vict. c. 117: (*Re South-Eastern Railway Co.*, 9 Jur. 650.)

(c) See L. S. O. clxxxiv. clxxxix. 6; C. S. O. 63, 152, 163.

Investment of
deposit.

IV. And be it enacted, That if the person or persons named in such warrant or order, or the survivors or survivor of them, desire to have invested (a) any sum so paid into the Bank of *England* or the Bank of *Ireland*, or any interest or dividend which may have accrued on any stocks or securities so transferred or deposited as aforesaid, the Court in the name of whose Accountant-General the same may have been paid may, on a petition (b) presented to such Court in a summary way by him or them, order that such sum or such interest or dividends shall, until the same be paid out to the parties entitled to the same in pursuance of this act, be laid out in the three per centum consolidated or three per centum reduced bank annuities, or any Government security or securities, at the option of the aforesaid person or persons, or the survivor or survivors of them.

(a) For the practice as to investments, see *Daniell's Chanc. Prac.* p. 1627.

(b) The petition should state the name of the securities in which the fund is desired to be invested, the Court not allowing the parties to have any discretion as to investment at separate times or in separate funds: (*Ex parte Newport, &c., Railway Co.*, 11 Jur. 160.) 2 VICT. c. 2).

V. And be it enacted, That on the termination of the session of Parliament in which the petition or bill for the purpose of making or sanctioning any such work or undertaking shall have been introduced into Parliament, or if such petition or bill shall be rejected or finally withdrawn by some proceeding in either House of Parliament, or shall not be allowed to proceed, or if the person or persons by whom the said money was paid or security deposited shall have failed to present a petition, or if an act be passed authorising the making of such work or undertaking, and if in any of the foregoing cases the person or persons named in such warrant or order, or the survivors or survivor of them, or the majority of such persons, apply by petition to the Court in the name of whose Accountant-General the sum of money mentioned in such warrant or order shall have been paid, or such Exchequer bills, stocks, or funds shall have been deposited or transferred as aforesaid, or to the Court of Exchequer in *Scotland*, in case such sum of money shall have been paid in the name of the said Queen's Remembrancer, the Court in the name of whose Accountant-General or Queen's Remembrancer such sum of money shall have been paid, or such Exchequer bills, stocks, or funds shall have been deposited or transferred, shall by order direct the sum of money paid in pursuance of such warrant or order, or the stocks, funds, or securities in or upon which the same may have been invested, and the interest or dividends thereof, or the Exchequer bills, stocks, or funds so deposited or transferred as aforesaid, and the interest and dividends thereof, to be paid or transferred to the party or parties so applying, or to any other person or persons (a) whom they may appoint in that behalf; but no such order shall be made in the case of any such petition or bill being rejected or not being allowed to proceed, or being withdrawn, or not being presented, or of an act being passed authorising the making of such work or undertaking, unless upon the production of the certificate of the Chairman of Committees of the House of Lords with reference to any proceeding in the House of Lords, or of the Speaker (b) of the House of Commons with reference to any proceeding in the House of Commons, that the said petition or bill was rejected or not allowed to proceed, or was withdrawn during its passage through one of the Houses of Parliament, or was not presented, or that such act was passed, which certificate the said Chairman or Speaker shall grant on the application in writing of the person or persons, or the majority of the persons named in such war-

- 9 Vict. c. 20. rant, or the survivor or survivors of them: Provided always, that the granting of any such certificate, or any mistake or error therein or in relation thereto, shall not make the Chairman or Speaker signing the same liable in respect of any moneys, stocks, funds, and securities which may be paid, deposited, invested, or transferred in pursuance of the provisions of this act, or the interest or dividends thereof.
- Granting certificate, &c., not to make the Chairman or Speaker signing the same liable.
- Petition out to bankers. (a) The payment out of the deposit may be made to the company's bankers: (*Ex parte Warwick and Leamington Railway Co.*, 13 Sim. 31.)
- Payment by majority of directors. In a case in which the petitioners were three out of five directors who paid in the money, the consent of the other two directors was directed to be obtained: (*Re Staines and Richmond Railway Co.*, 9 Jur. 479.) But according to a note in Seton on Decrees, 3d ed., p. 1105, the practice now is to order payment on the petition of the majority.
- Signatures of majority to petition. And the signatures of such majority is sufficient to enable the Court to make an order for payment to one of the parties, without having the signatures verified by affidavit, the solicitor having attested them: (*Ex parte Brompton Water-works Co.*, 8 W. R. 636, n.)
- Sealing of petition. Where the petition is by a company, the original petition must be sealed with the common seal: (*Re Dartmouth and Torbay Railway Co.*, 9 W. R. 609.)
- Verification of seal. As to the verification of the sealing, see *Ex parte London, Chatham, and Dover Railway Co.*, 8 W. R. 636.)
- Payment out of part of deposit. Part of the deposit will not be ordered to be paid out on withdrawal of part of the undertaking proposed by the bill: (*Re Aberystwith Railway Co.*, 3 De G. F. & J. 201; 7 Jur. N. S. 564.)
- Special provisions as to payment out. As to special clauses inserted into acts, directing payment out of the deposit in a manner different from that directed by 9 Vict. c. 20, see Seton on Decrees, 2d ed., p. 1105.
- Forms of orders for payment out. And for orders for payment out of deposits on certificates by the Speaker, the Chairman of Committees in the House of Lords, of the Treasury Solicitor on the execution of a bond, or of the Board of Trade, where part of the capital is paid up, and the line partly completed, see Seton on Decrees, p. 1103-4.
- Signature of certificate by Deputy-Speaker. (b) The Commons' standing order, (20th July 1855,) giving the Deputy-Speaker (the Chairman of the Committee of Ways and Means) the authority of the Speaker in the unavoidable absence of the latter, it has been held that the signature of the Deputy-Speaker to a certificate of the withdrawal of a bill is sufficient: (*Ex parte Stockbridge Railway Bill*, L. R. 1 Eq. 364; 12 Jur. N. S. 465.)

9 & 10 VICT. c. 57.

*An Act for Regulating the Gauge of Railways.**
—[18th August, 1846.]

WHEREAS it is expedient to define the gauge on which railways shall be constructed: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that after the passing of this act it shall not be lawful (except as hereinafter excepted) to construct any railway for the conveyance of passengers on any gauge other than four feet eight inches and half an inch in *Great Britain*, and five feet three inches in *Ireland*: Provided always, that nothing hereinbefore contained shall be deemed to forbid the maintenance and repair of any railway constructed before the passing of this act on any gauge other than those hereinbefore specified, or to forbid the laying of new rails on the same gauge on which such railway is constructed within the limits of deviation authorised by the several acts under the authority of which such railways are severally constructed.

On what gauge railways shall be made.

II. And be it enacted, That nothing hereinbefore contained shall apply to any railway constructed or to be constructed under the provisions of any present or future act containing any special enactment defining the gauge or gauges of such railway, or any part thereof, or to any railway which is in its whole length southward of the Great Western Railway, or to any railway in any of the counties of Cornwall, Devon, Dorset, or Somerset, for which any act has been or shall be passed in this session of Parliament, or to any railway in any of the last-mentioned counties now in course of construction, or to the two railways severally to be constructed under the authority of two acts passed in this session of Parliament, severally intituled "An Act for Making a Railway from the Great Western Railway at West Drayton to Uxbridge in Middlesex," and "An Act for Making a Railway from the Great Western Railway at Maidenhead in Berkshire to the Town of High Wycombe in the County

Exception of certain railways.

9 & 10 Vict. c. 160.

9 & 10 Vict. c. 236.

* The 4th, 6th, 7th, and 8th sections of this act are to be applied to railways made under a certificate of the Board of Trade, under the Railways Construction Facilities Act, 1864, (27 & 28 Vict. c. 121, Schedule.)

9 & 10 Vict. c. 57. of Buckingham;” or to so much of an act passed in this session, intituled “An Act to authorise certain Extensions of the Line of the Oxford, Worcester, and Wolverhampton Railway, and to amend the Act relating thereto, as authorises the Construction of a Branch Railway from the Oxford, Worcester, and Wolverhampton Railway to the Town of Witney in the County of Oxford;” or to an act passed or which may be passed in this session of Parliament, “to authorise the construction of a railway from Melin-y-Manach to Rhydydefydd in the County of Glamorgan.”

Certain railways to be on the broad gauge, 8 & 9 Vict. c. 190. III. And be it enacted, That the several railways authorised to be constructed by an act passed in the last session of Parliament, intituled “An Act for making a Railway, to be called ‘The South Wales Railway,’” and by an act also passed in the last session of Parliament, intituled “An Act for making a Railway from Monmouth to Hereford, with Branches therefrom to Westbury and to join the Forest of Dean Railway,” and by two acts passed in this session of Parliament, severally intituled “An Act for completing the Line of the South Wales Railway, and to authorise the Construction of an Extension and certain Alterations of the said Railway, and certain Branch Railways in connexion therewith,” and “An Act for making a Railway Communication between the City of Bristol and the proposed South Wales Railway in the County of Monmouth, with a Branch Railway therefrom,” shall be constructed on the gauge of seven feet.

Gauge not to be altered. IV. And be it enacted, That it shall not be lawful after the passing of this act to alter the gauge of any railway used for the conveyance of passengers.

Provision as to the Oxford and Rugby, and Oxford, Worcester, and Wolverhampton railways. 8 & 9 Vict. c. 188. 8 & 9 Vict. c. 184. V. And be it enacted, That nothing hereinbefore contained shall be deemed to affect the provisions of two acts passed in the last session of Parliament, respectively intituled “An Act for Making a Railway from the City of Oxford to the Town of Rugby,” and “An Act for making a Railway from Oxford to Worcester and Wolverhampton,” with respect to the gauge on which they are to be formed, or the additional rails which according to the several provisions of the last two recited acts are to be or may be laid down and maintained on the railways thereby authorised, or with respect to the powers thereby conferred on the Commissioners of Her Majesty’s Privy Council for Trade and Foreign Plantations concerning the construction and use of the railways thereby authorised.

VI. And be it enacted, That if any railway used for the conveyance of passengers shall be constructed or altered contrary to the provisions of this act, the company authorised to construct the railway, or, in the case of any demise or lease of such railway, the company for the time being having the control of the works of such railway, shall forfeit ten pounds for every mile of such railway which shall be so unlawfully constructed or altered, during every day that the same shall continue so unlawfully constructed or altered; and in estimating the amount of any such penalty any distance less than one mile shall be estimated as a mile.

9 & 10 VICT. c. 57.
Penalty on company for constructing railways contrary to this act.

VII. And be it enacted, That, over and above the penalty hereinbefore provided, if any railway used for the conveyance of passengers shall be constructed or altered contrary to the provisions of this act, it shall be lawful for the Commissioners of Her Majesty's Woods, Forests, Land Revenues, Works, and Buildings, or for the Lords of the Committee of Her Majesty's Privy Council for Trade and Foreign Plantations, to abate and remove the same or any part thereof so constructed or altered contrary to the provisions of this act, and to restore the site thereof to its former condition.

Railways constructed contrary to this act may be abated.

VIII. And be it enacted, That all penalties under this act may be recovered from the company liable to pay and make good the same, as under the provisions of an act passed in the last session of Parliament, intituled "An Act for consolidating in one act certain provisions usually inserted in acts authorising the making of railways," a penalty for any infringement of the last-recited act is recoverable against a company authorised to construct a railway.

Recovery of penalties.

8 & 9 VICT. c. 20.

IX. And be it enacted, That this act may be amended or repealed by any act to be passed in this session of Parliament.

Act may be amended, &c.

LORD CAMPBELL'S ACT.*

(9 & 10 VICT. c. 93.)

An Act for Compensating the Families of Persons Killed by Accidents.†—[26th August 1846.]

An action to be maintainable against any person causing death through neglect, &c., notwithstanding the death of the person injured.

WHEREAS no action at law is now maintainable against a person who by his wrongful act, neglect, or default may have caused the death of another person, and it is oftentimes right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused by him: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that whensoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

Action to be for the benefit of certain relations, and shall be brought by and in the name of executor or administrator of the deceased.

II. And be it enacted, That every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the beforementioned parties in such shares as the jury by their verdict shall find and direct.

* Amended by 27 & 28 Vict. c. 95.

† As to the liability of railway companies as carriers of passengers, see *ante*, pp. 401-411; and particularly as to Lord Campbell's Act, and the cases thereon, p. 405, *et seq.*

III. Provided always, and be it enacted, That not more than 9 & 10 VICT. c. 93.
one action shall lie for and in respect of the same subject-matter of complaint; and that every such action shall be commenced within twelve calendar months after the death of such deceased person. Only one action shall lie, and to be commenced within twelve months.

IV. And be it enacted, That in every such action the plaintiff on the record shall be required, together with the declaration, to deliver to the defendant or his attorney a full particular of the person or persons for whom and on whose behalf such action shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered. Plaintiff to deliver a full particular of the person for whom such damages shall be claimed.

V. And be it enacted, That the following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject-matter; that is to say, words denoting the singular number are to be understood to apply also to a plurality of persons or things; and words denoting the masculine gender are to be understood to apply also to persons of the feminine gender; and the word "person" shall apply to bodies politic and corporate; and the word "parent" shall include father and mother, and grandfather and grandmother, and stepfather and stepmother; and the word "child" shall include son and daughter, and grandson and granddaughter, and stepson and stepdaughter. Construction of act.

VI. And be it enacted, That this act shall come into operation from and immediately after the passing thereof, and that nothing therein contained shall apply to that part of the United Kingdom called Scotland. Act to take effect after passing, and not to apply to Scotland.

VII. And be it enacted, That this act may be amended or repealed by any act to be passed in this session of Parliament. Act may be amended, &c.

THE HOUSE OF COMMONS COSTS TAXATION
ACT, 1847.

(10 & 11 VICT. c. 69.)

An Act for the more effectual Taxation of Costs on Private Bills in the House of Commons.(a)—[22d July 1847.]*

6 G. IV. c. 123.

Recited act, 6 G.
IV. c. 123, re-
pealed.

WHEREAS an act was passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled "An Act to establish a Taxation of Costs on Private Bills in the House of Commons, and to prohibit the Sale of certain Offices under the Serjeant-at-Arms attending the House of Commons:" and whereas it is expedient to repeal the same, and to make more effectual provision for taxing the costs and expenses to be charged by parliamentary agents, attorneys, solicitors, and others in future sessions of Parliament in respect of bills subject to the payment of fees in Parliament, commonly called private bills, and to be incurred in complying with the standing orders of the House of Commons relative to such bills, and in preparing, bringing in, and carrying the same through, or in opposing the same in, the House of Commons: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, except as to any costs, charges, and expenses which shall have been incurred in the present or any preceding session of Parliament, the said recited act shall be repealed: provided always, that the repeal of the said recited act which shall not be construed to revive any act or any provision thereof which was thereby repealed.

(a) The act relating to the taxation of costs in the House of Lords, is 12 & 13 Vict. c. 78, *post*; and see 28 Vict. c. 27, *post*.

Parliamentary
agent, attorney,
or solicitor not to
sue for costs un-
til one month
after delivery of
his bill.

II. And be it enacted, That no parliamentary agent, attorney, or solicitor, nor any executor, administrator, or assignee of any parliamentary agent, attorney, or solicitor, shall commence or maintain any action or suit for the recovery of any costs, charges, or expenses in respect of any proceedings in the House of Commons in any future session of Parliament relating to any

* For the table of fees to be charged at the House of Commons, see C. S. O., 27th July 1864, *post*.

petition for a private bill, or private bill, or in respect of complying with the standing orders of the said House relative thereto, or in preparing, bringing in, and carrying the same through, or opposing the same in, the House of Commons, until the expiration of one month after such parliamentary agent, attorney, or solicitor, or executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, has delivered unto the party to be charged therewith, or sent by post to or left for him at his counting-house, office of business, dwelling-house, or last known place of abode, a bill of such costs, charges, and expenses, and which bill shall either be subscribed with the proper hand of such parliamentary agent, attorney, or solicitor, or in the case of a partnership by any of the partners, either with his own name or with the name of such partnership, or of the executor, administrator or assignee of such parliamentary agent, attorney, or solicitor, or be enclosed in or accompanied by a letter subscribed in like manner referring to such bill: Provided always, that it shall not in any case be necessary, in the first instance, for such parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, in proving a compliance with this act to prove the contents of the bill delivered, sent, or left by him, but it shall be sufficient to prove that a bill of costs, charges, and expenses subscribed in manner aforesaid, or enclosed in or accompanied by such letter as aforesaid, was delivered, sent, or left in manner aforesaid; but nevertheless it shall be competent for the other party to show that the bill so delivered, sent, or left, was not such a bill as constituted a *bonâ fide* compliance with this act: Provided also, that it shall be lawful for any judge of the Superior Courts of Law or Equity in *England or Ireland*, or of the Court of Session in *Scotland*, to authorise a parliamentary agent, attorney, or solicitor to commence an action or suit for the recovery of his costs, charges, and expenses against the party chargeable therewith, although one month has not expired from the delivery of a bill as aforesaid, on proof to the satisfaction of the said judge that there is probable cause for believing that such party is about to quit that part of the United Kingdom in which such judge hath jurisdiction.

10 & 11 VICT.
c. 69.

Evidence of delivery of bill.

Power to judge to authorise action before expiration of one month.

III. And be it enacted, That the Speaker of the House of Commons shall appoint a fit person to be the taxing-officer (a) of the House of Commons, and every person so appointed shall hold his office during the pleasure of the Speaker, and shall execute the duties of his office conformably to such directions as he may from time to time receive from the Speaker.

Taxing-officer to be appointed by the Speaker.

10 & 11 Vict.
c. 69.

(a) As to whether costs incurred in Parliament will be taxed by the taxing-master of the Court of Chancery, see *Re Sudlow*, 18 L. J. (Ch.) 182.

The Speaker to
prepare list of
charges thence-
forth to be
allowed.

IV. And be it enacted, That the Speaker may from time to time prepare a list of such charges as it shall appear to him that, after the present session of Parliament, parliamentary agents, attorneys, solicitors, and others may justly make with reference to the several matters comprised in such list; and the several charges therein specified shall be the utmost charges thenceforth to be allowed upon the taxation of any such bill of costs, charges, and expenses in respect of the several matters therein specified: Provided always, that the said taxing-officer may allow all fair and reasonable costs, charges, and expenses in respect of any matters not included in such list.

Taxing-officer
empowered to
examine parties
and witnesses on
oath.

V. And be it enacted, That for the purpose of any such taxation the said taxing-officer may examine upon oath any party to such taxation, and any witnesses who may be examined in relation thereto, and may receive affidavits, sworn before him or before any master or master-extraordinary of the High Court of Chancery, relative to such costs, charges, or expenses; and any person who on such examination on oath, or in any such affidavit, shall wilfully or corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Taxing-officer
empowered to
call for books
and papers.

VI. And be it enacted, That the said taxing-officer shall be empowered to call for the production of any books or writings in the hands of any party to such taxation relating to the matters of such taxation: Provided always, that nothing herein contained shall be construed to authorise such taxing-officer to determine the amount of fees which may have been payable to the House of Commons in respect of the proceedings upon any private bill.

Taxing-officer to
take such fees as
may be allowed
by House of
Commons.

VII. And be it enacted, That it shall be lawful for the said taxing-officer to demand and receive for any such taxation such fees as the House of Commons may from time to time by any standing order authorise and direct, and to charge the said fees, and also to award costs of such taxation against either party to such taxation, or in such proportion against each party as he may think fit, and he shall pay and apply the fees so received by him in such manner as shall be directed by any such standing order as aforesaid.

Application of
fees.

On application
of party charge-
able, or on

VIII. And be it enacted, That if any person upon whom any demand shall be made by any parliamentary agent, attorney, or

solicitor or executor, administrator or assignee, of such parliamentary agent, attorney, or solicitor, or other person, for any costs, charges, or expenses in respect of any proceedings in the House of Commons in any future session of Parliament relating to any petition for a private bill, or private bill, or in respect of complying with the standing orders of the said House relative thereto, or in preparing, bringing in, or carrying the same through, or in opposing the same in the House of Commons, or if any parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, who shall be aggrieved by the non-payment of any costs, charges, and expenses incurred or charged by him in respect of any such proceedings as aforesaid, shall make application to the said taxing-officer at his office for the taxation of such costs, charges, and expenses, the said taxing-officer, on receiving a true copy of the bill of such costs, charges, and expenses which shall have been duly delivered as aforesaid to the party charged therewith, shall in due course proceed to tax and settle the same; and upon every such taxation, if either the parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, by whom such demand shall be made as aforesaid, or the party charged with such bill of costs, charges, and expenses, having due notice, shall refuse or neglect to attend such taxation, the said taxing-officer may proceed to tax and settle such bill and demand *ex parte*; and if pending such taxation any action or other proceeding shall be commenced for the recovery of such bill of costs, charges, and expenses, the court or judge before whom the same shall be brought shall stay all proceedings thereon until the amount of such bill shall have been duly certified by the Speaker as hereinafter provided: Provided always, that no such application shall be entertained by the said taxing-officer if made by the party charged with such bill after a verdict shall have been obtained or a writ of inquiry executed in any action for the recovery of the demand of any such parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, or after the expiration of six months after such bill shall have been delivered, sent, or left as aforesaid: Provided also, that if any such application shall be made after the expiration of six months as aforesaid, it shall be lawful for the Speaker, if he shall so think fit, on receiving a report of special circumstances from the said taxing-officer, to direct such bill to be taxed.

10 & 11 VICT.
c. 60.

application of
parliamentary
agent, attorney,
or solicitor, the
taxing-officer to
tax the bill.

No application
to be entertained
by taxing-officer
after verdict
obtained.

10 & 11 Vict.
c. 69.

Taxing-officer to
report to the
Speaker.

If either party
complain of re-
port, they may
deposit a memo-
rial, and the
Speaker may re-
quire a further
report.

If no memorial
deposited,
Speaker may
issue certificate
of the amount
found due.

Certificate to
have the effect of
a warrant to con-
fess judgment.

Construction of
certain words in
this act.

IX. And be it enacted, That the said taxing-officer shall, if required by either party, report his taxation to the Speaker, and in such report shall state the amount fairly chargeable in respect of such costs, charges, and expenses, together with the amount of costs and fees payable in respect of such taxation as aforesaid; and within twenty-one clear days after any such report shall have been made either party may deposit in the office of the said taxing-officer a memorial, addressed to the Speaker, complaining of such report or any part thereof, and the Speaker may, if he shall so think fit, refer the same, together with such report, to the said taxing-officer, and may require a further report in relation thereto, and on receiving such further report may direct the said taxing-officer, if necessary, to amend his report; and if no such memorial be deposited as aforesaid, or so soon as the matters complained of in any such memorial shall have been finally disposed of, the Speaker shall, upon application made to him, deliver to the party concerned therein, and requiring the same, a certificate of the amount so ascertained, which certificate shall be binding and conclusive on the parties as to the matters comprised in such taxation, and as to the amount of such costs, charges, and expenses, and of the costs and fees payable in respect of such taxation, in all proceedings at law or in equity or otherwise; and in any action or other proceeding brought for the recovery of the amount so certified, such certificate shall have the effect of a warrant of attorney to confess judgment; and the Court in which such action shall be commenced, or any judge thereof, shall, on production of such certificate, order judgment to be entered up for the sum specified in such certificate in like manner as if the defendant in any such action had signed a warrant to confess judgment in such action to that amount: Provided always, that if such defendant shall have pleaded that he is not liable to the payment of such costs, charges, and expenses, such certificate shall be conclusive only as to the amount thereof which shall be payable by such defendant in case the plaintiff shall in such action recover the same.

X. And be it enacted, That in the construction of this act the word "month" shall be taken to mean a calendar month; and every word importing the singular number only shall extend and be applied to several persons, matters, or things as well as one person, matter, or thing; and every word importing the plural number shall extend and be applied to one person, matter, or thing as well as several persons, matters, or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and the word "person" shall

extend to any body politic, corporate, or collegiate, municipal, civil, or ecclesiastical, aggregate or sole, as well as an individual; and the word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other person allowed by law to make a declaration instead of taking an oath; unless in any of the cases aforesaid it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

10 & 11 Vict.
c. 69.

XI. And be it enacted, That in citing this act in other acts of Parliament, and in legal and other instruments, it shall be sufficient to use the expression, "The House of Commons Costs Taxation Act, 1847."

Form of citing
the act.

XII. And be it enacted, That this act may be amended or repealed by any act to be passed in this session of Parliament.

Act may be
amended, &c.

THE HOUSE OF LORDS COSTS TAXATION ACT, 1849.

(12 & 13 VICT. c. 78.)

An Act for the more effectual Taxation of Costs on Private Bills in the House of Lords (a), and to facilitate the Taxation of other Costs on Private Bills in certain cases.—[28th July 1849.]

WHEREAS an act was passed in the seventh year of the reign of His late Majesty King George the Fourth, intituled "An Act to establish a Taxation of Costs on Private Bills in the House of Lords:" And whereas it is expedient to repeal the same, and to make more effectual provision for taxing the costs and expenses to be charged by parliamentary agents, attorneys, solicitors, and others, in future sessions of Parliament, in respect of bills subject to the payment of fees in Parliament, commonly called private bills, and to be incurred in complying with the standing orders of the House of Lords relative to such bills, and in preparing, bringing in, and carrying the same through, or in opposing the same in, the House of Lords, and to facilitate the taxation of other costs incurred in respect of private bills, in certain cases: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parlia-

7 & 8 G. IV.
c. 64.

12 & 13 Vict.
c. 78.
Recited Act
7 & 8 G. IV.
c. 64, repealed.

ment assembled, and by the authority of the same, that, except as to any cost, charges, and expenses which shall have been incurred in the present or any preceding session of Parliament, the said recited act shall be repealed.

(a) The House of Commons Costs Taxation Act, 1847, is 10 & 11 Vict. c. 69, *ante*, and see 28 Vict. c. 27, *post*.

Parliamentary
agent, attorney,
or solicitor not
to sue for costs
until one month
after delivery
of his bill.

II. And be it enacted, That no parliamentary agent, attorney, or solicitor, nor any executor, administrator, or assignee of any parliamentary agent, attorney, or solicitor, shall commence or maintain any action or suit for the recovery of any costs, charges, or expenses in respect of any proceedings in the House of Lords in any future session of Parliament relating to any petition for a private bill, or private bill, or in respect of complying with the standing orders of the said House relative thereto, or in preparing, bringing in, and carrying the same through, or opposing the same in, the House of Lords, until the expiration of one month after such parliamentary agent, attorney, or solicitor, or executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, has delivered unto the party to be charged therewith, or sent by post to or left for him at his counting-house, office of business, dwelling-house, or last known place of abode, a bill of such costs, charges, and expenses, and which bill shall either be subscribed with the proper hand of such parliamentary agent, attorney, or solicitor, or in the case of a partnership by any of the partners, either with his own name or with the name of such partnership, or of the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or be enclosed in or accompanied by a letter subscribed in like manner referring to such bill: Provided always, that it shall not in any case be necessary, in the first instance, for such parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, in proving a compliance with this act, to prove the contents of the bill delivered, sent, or left by him, but it shall be sufficient to prove that a bill of costs, charges, and expenses, subscribed in manner aforesaid, or enclosed in or accompanied by such letter as aforesaid, was delivered, sent, or left in manner aforesaid; but nevertheless it shall be competent for the other party to show that the bill so delivered, sent, or left was not such a bill as constituted a *bonâ fide* compliance with this act: Provided also, that it shall be lawful for any judge of the Superior Courts of Law or Equity in *England or Ireland*, or of the Court of Session in *Scotland*, to authorise a parliamentary agent, attorney, or solicitor to commence an action or suit for the recovery of his costs, charges,

Evidence of
delivery of bill.

Power to judge
to authorise
action before
expiration of
one month.

and expenses against the party chargeable therewith, although one month has not expired from the delivery of a bill as aforesaid, on proof to the satisfaction of the said judge that there is probable cause for believing that such party is about to quit that part of the United Kingdom in which such judge hath jurisdiction.

12 & 13 Vict.
c. 78.

III. And be it enacted, That the clerk of the Parliaments, when discharging the duties of his office in person, or in his absence the clerk-assistant, shall appoint a fit person to be the taxing-officer of the House of Lords; and every person so appointed shall hold his office during the pleasure of the clerk of the Parliaments or clerk-assistant, and shall execute the duties of his office conformably to such directions as he may from time to time receive from the clerk of the Parliaments or clerk-assistant.

Taxing-officer to
be appointed by
the clerk of
Parliaments or
clerk-assistant.

IV. And be it enacted, That the clerk of the Parliaments, when discharging the duties of his office in person, or in his absence the clerk-assistant, may from time to time prepare a list of such charges as it shall appear to him that, after the present session of Parliament, parliamentary agents, attorneys, solicitors, and others may justly make with reference to the several matters comprised in such list; and the several charges therein specified shall be the utmost charges thenceforth to be allowed upon the taxation of any such bill of costs, charges, and expenses in respect of the several matters therein specified: Provided always, that the said taxing-officer may allow all fair and reasonable costs, charges, and expenses in respect of any matters not included in such list.

The clerk of
Parliaments or
clerk-assistant
to prepare list
of charges
thenceforth to
be allowed.

V. And be it enacted, That for the purpose of any such taxation, the said taxing-officer may examine upon oath any party to such taxation, and any witnesses who may be examined in relation thereto, and may receive affidavits, sworn before him or before any master or master extraordinary of the High Court of Chancery, relative to such costs, charges, or expenses; and any person who on such examination on oath or in any such affidavit shall wilfully or corruptly give false evidence shall be liable to the penalties of wilful and corrupt perjury.

Taxing-officer
empowered to
examine parties
and witnesses on
oath.

VI. And be it enacted, That the said taxing-officer shall be empowered to call for the production of any books or writings in the hands of any party to such taxation relating to the matters of such taxation.

Taxing-officer
empowered to
call for books
and papers.

VII. And be it enacted, That it shall be lawful for the said

Taxing-officer to
take such fees as

12 & 13 Vict.
c. 78.
—
may be allowed
by House of
Lords.

Application of
fees.

On application of
party chargeable,
or on application
of parliamentary
agent, attorney,
or solicitor, the
taxing-officer to
tax the bill.

No application to
be entertained
by taxing-officer
after verdict
obtained.

taxing-officer to demand and receive for any such taxation such fees as the House of Lords may from time to time by any order authorise and direct, and to charge the said fees, and also to award costs of such taxation against either party to such taxation, or in such proportion against each party as he may think fit, and he shall pay and apply the fees so received by him in such manner as shall be directed by any such order as aforesaid.

VIII. And be it enacted, That if any person upon whom any demand shall be made by any parliamentary agent, attorney, or solicitor, or executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, for any costs, charges, or expenses in respect of any proceedings in the House of Lords in any future session of Parliament relating to any petition for a private bill, or private bill, or in respect of complying with the standing orders of the said House relative thereto, or in preparing, bringing in, or carrying the same through, or in opposing the same in, the House of Lords, or if any parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, who shall be aggrieved by the non-payment of any costs, charges, and expenses incurred or charged by him in respect of any such proceedings as aforesaid, shall make application to the said taxing-officer at his office for the taxation of such costs, charges, and expenses, the said taxing-officer, on receiving a true copy of the bill of such costs, charges, and expenses which shall have been duly delivered as aforesaid to the party charged therewith, shall in due course proceed to tax and settle the same; and upon every such taxation, if either the parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, by whom such demand shall be made as aforesaid, or the party charged with such bill of costs, charges, and expenses, having due notice, shall refuse or neglect to attend such taxation, the said taxing-officer may proceed to tax and settle such bill and demand *ex parte*; and if pending such taxation any action or other proceeding shall be commenced for the recovery of such bill of costs, charges, and expenses, the court or judge before whom the same shall be brought shall stay all proceedings thereon until the amount of such bill shall have been duly certified by the clerk of the Parliaments or clerk-assistant as hereinafter provided: Provided always, that no such application shall be entertained by the said taxing-officer if made by the party charged with such bill after a verdict shall have been obtained or a writ of inquiry executed in any action for the recovery of the demand of any such

parliamentary agent, attorney, or solicitor, or the executor, administrator, or assignee of such parliamentary agent, attorney, or solicitor, or other person, or after the expiration of six months after such bill shall have been delivered, sent, or left as aforesaid: Provided also, that if any such application shall be made after the expiration of six months as aforesaid it shall be lawful for the clerk of the Parliaments or clerk assistant aforesaid, if he shall so think fit, on receiving a report of special circumstances from the said taxing officer, to direct such bill to be taxed.

12 & 13 Vict.
c. 78.

IX. And be it enacted, That the said taxing officer shall report his taxation to the clerk of the Parliaments or clerk assistant as aforesaid, and in such report shall state the amount fairly chargeable in respect of such costs, charges, and expenses, together with the amount of costs and fees payable in respect of such taxation as aforesaid, and shall also state in such report the amount due in respect of the said costs, charges, and expenses; and within twenty-one clear days after any such report shall have been made, either party may deposit in the office of the clerk of the Parliaments, a memorial, addressed to the clerk of the Parliaments or clerk assistant as aforesaid, complaining of such report or any part thereof, and such clerk of the Parliaments or clerk assistant as aforesaid may, if he shall so think fit, refer the same, together with such report, to the said taxing officer, and may require a further report in relation thereto, and on receiving such further report may direct the said taxing officer, if necessary, to amend his report; and if no such memorial be deposited as aforesaid, or so soon as the matters complained of in any such memorial shall have been finally disposed of, such clerk of the Parliaments or clerk assistant as aforesaid, shall, upon application made to him, deliver to the party concerned therein, and requiring the same, a certificate of the amount so ascertained, which certificate shall be binding and conclusive on the parties as to the matters comprised in such taxation, and as to the amount of such costs, charges, and expenses, and the amount due in respect of the same, and of the costs and fees payable in respect of such taxation, in all proceedings at law or in equity or otherwise; and in any action or other proceeding brought for the recovery of the amount so certified to be due, such certificate shall have the effect of a warrant of attorney to confess judgment; and the court in which such action shall be commenced, or any judge thereof, shall, on production of such certificate, order judgment to be entered up for the sum specified in such certificate, in like manner as if the defendant in any such action had signed a warrant to con-

Taxing officer
to report to the
clerk of the Par-
liaments.

If either party
complain of re-
port, they may
deposit a memo-
rial, and the
clerk of the Par-
liaments may re-
quire a further
report.

If no memorial
deposited, clerk
of the Parlia-
ments may issue
certificate of the
amount found
due.

Certificate to
have the effect of
a warrant to con-
fess judgment.

12 & 13 Vict.
c. 78.

fess judgment in such action to that amount: Provided always, that if such defendant shall have pleaded that he is not liable to the payment of such costs, charges, and expenses, such certificate shall be conclusive only as to the amount thereof which shall be payable by such defendant in case the plaintiff shall in such action recover the same.

Taxing officer of either house may tax costs not otherwise taxable under the act by virtue of which any bill shall be taxed; and may request other officers to assist him.

Such officers to have the same powers as in taxing other costs.

X. And be it enacted, That if any bill of costs taxable by virtue of this act, or of "The House of Commons Costs Taxation Act, 1847" (a), shall comprise any costs, charges, and expenses incurred in respect of a private bill, but not taxable by virtue of the act in pursuance whereof such bill shall come to be taxed, it shall be lawful for the taxing officer of the House of Lords, or for the taxing officer of the House of Commons, as the case may be, either to tax and settle such last-mentioned costs, charges, and expenses, or to request the taxing officer of the other House of Parliament, or the proper officer of any other court having such an officer, to assist him in taxing and settling any part of such bill; and such officer so requested shall thereupon proceed to tax and settle the same, and shall return the same, with his opinion thereupon, to the officer who shall have so requested him to tax and settle the same; and in taxing such costs, charges, and expenses, the taxing officer of the House of Lords and the taxing officer of the House of Commons respectively shall have the same powers and may receive the same fees in respect of such taxation as if such costs, charges, and expenses were taxable by virtue of this act, or of the "House of Commons Costs Taxation Act, 1847," as the case may be; and the proper officer of any court so requested to tax the same shall have the same powers and may receive the same fees as upon a reference from the court of which he is such officer.

(a) See 10 & 11 Vict. c. 69, *ante*, p. lvi.

Taxing officers to include certain costs in their reports, and certificates of the amount to be delivered.

XI. And be it enacted, That the taxing officer of the House of Lords, or the taxing officer of the House of Commons as the case may be, may include the amount of such last-mentioned costs, charges, and expenses in the report of his taxation of any such bill of costs; and in case the clerk of the Parliaments or clerk assistant, or the Speaker of the House of Commons, as the case may be, shall deliver a certificate of the amount so ascertained and declared in such report, including such last-mentioned costs, charges, and expenses, such certificate shall have the same force and effect as if the whole of such bill of costs were taxable by virtue of the act in pursuance whereof such certificate shall be so delivered.

Officers of other courts may re-

XII. And be it enacted, That in case the taxing officer of

the House of Lords, or the taxing officer of the House of Commons, shall be requested by the proper officer of any other court to assist him in taxing and settling any costs, charges, and expenses incurred in respect of a private bill, being part of any bill of costs which shall have been referred to him by the court of which he is such officer, such taxing officer so requested shall thereupon proceed to tax and settle the same, and shall return the same, with his opinion thereupon, to the officer who shall have so requested him to tax and settle the same, and shall have the same powers and may receive the same fees in respect of such taxation as if application had been made to him for the taxation thereof in pursuance of this act, or of the "House of Commons Costs Taxation Act, 1847" (a), as the case may be.

12 & 13 Vict.
c. 78.

quest the taxing
officer of either
House to tax
parts of bills.

(a) See 10 & 11 Vict. c. 69, *ante*, p. lvi.

XIII. And be it enacted, That it shall be lawful for the taxing officer of the House of Lords and for the taxing officer of the House of Commons to take an account between the parties to any taxation under this act or the "House of Commons Costs Taxation Act, 1847" (a), of all sums of money paid or received in respect of any bill of costs which is the subject of such taxation, or any matters contained therein, and to report the amount of all such sums of money and the amount due in respect of such bills of costs.

Taxing officer of
either House may
take an account
between the
parties.

(a) *Ante*, p. lvi.

XIV. And be it enacted, That in the construction of this act the word "month" shall be taken to mean a calendar month; and every word importing the singular number only shall extend and be applied to several persons, matters, or things, as well as one person, matter, or thing; and every word importing the plural number shall extend and be applied to one person, matter, or thing, as well as several persons, matters, or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and the word "person" shall extend to any body politic, corporate, or collegiate, municipal, civil or ecclesiastical, aggregate or sole, as well as an individual; and the word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other person allowed by law to make a declaration instead of taking an oath; unless in any of the cases aforesaid it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

Construction of
certain words
in this act.

XV. And be it enacted, That in citing this act in other acts of parliament, and in legal and other instruments, it shall be

Form of citing
the act.

12 & 13 Vict.
c. 78.

Act may be
amended, &c.

sufficient to use the expression "The House of Lords Costs Taxation Act, 1849."

XVI. And be it enacted, That this act may be amended or repealed by any act to be passed in this session of Parliament.

THE RAILWAY CLEARING ACT, 1850.

(13 & 14 VICT. c. 33.)

An Act for Regulating Legal Proceedings by or against the Committee of Railway Companies associated under the Railway Clearing System, and for other Purposes.—[25th June 1850.]

WHEREAS for some time past arrangements have subsisted between several railway companies for the transmission without interruption of the through traffic in passengers, animals, minerals, and goods passing over different lines of railway, for the purpose of affording, in respect to such passengers, animals, minerals, and goods, the same or the like facilities as if such lines had belonged to one company, which arrangements are commonly known as and in this act are designated as "the clearing system," and which arrangements are conducted under the superintendence of a committee appointed by the boards of directors of such several railway companies, which committee is in this act designated "the committee," and the business of such committee has heretofore been and is now carried on at a building appropriated for the purpose in Seymour Street, adjoining the Euston Station of the London and North-western Railway Company: And whereas the clearing system has been productive of great convenience to the public, and of a considerable saving of expense in the transmission of passengers, animals, minerals, and goods over the lines of the several railway companies, parties to such association; but considerable difficulty has been experienced in carrying into effect the objects of the association, in consequence of the committee not possessing the power of prosecuting or defending actions or suits, or taking other legal proceedings: And whereas George Carr Glyn esquire is the present chairman, and Kenneth Morrison is the present secretary of the committee: And whereas the purposes aforesaid cannot be effected without the authority of Parliament: May it therefore please your Majesty that it

may be enacted; and be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the several companies which at the time of the passing of this act are parties to the clearing system, and every other company which shall in manner hereafter mentioned become party to the same, shall be subject to the provisions of this act.

13 & 14 VICT.
c. 33.

Companies parties to the clearing system to be subject to the provisions of this act.

II. And be it enacted, That if any company which may not be a party to the clearing system shall, by writing sealed with the common seal of such company, request the committee to admit such company to be a party to the clearing system, and the committee shall assent to such request, such company shall from the time of such assent being given, or at such other time as may be specified in the said request, become a party to the clearing system.

Other companies may join, with assent of committee.

III. And be it enacted, That if any company shall, by writing sealed with the common seal of such company, give notice to the committee of the desire of such company to cease to be a party to the clearing system, such company shall, at the expiration of one calendar month from the time when such notice shall be given, or if a more distant time shall be stated in such notice, then at the time so stated, cease to be a party to the clearing system.

Companies may retire, on giving notice.

IV. And be it enacted, That if not less than two-thirds of the committee present at a meeting specially summoned shall, by writing signed by their secretary or by two members of the committee, give notice to any company that such company shall cease to be a party to the clearing system, at a time named in such notice, not being less than one calendar month from the time of giving such notice, such company shall at the time so named cease to be a party to the clearing system.

Committee may give company notice to retire.

V. And be it enacted, That each company party to the clearing system shall at all times be entitled to be represented on the committee by one delegate appointed by the board of directors of such company from time to time, such appointment to be certified in writing by the secretary or any two directors of such company: Provided always, that, notwithstanding any company may happen to be unrepresented by a delegate at any meeting, the acts of the committee shall be valid.

Each company to appoint a member of the committee.

VI. And be it enacted, That the committee shall meet at one

Meetings of the committee, quorum, &c.

18 & 14 Vict.
c. 33.

of the clock in the afternoon of the second Wednesday in the months of March, June, September, and December in every year, or so soon thereafter as a quorum shall be assembled, and at any other times whereof the secretary shall, at the written request of the chairman for the time being, or any two members of the committee, give at least ten days' notice in writing to every company party to the clearing system, or the secretary of every such company; and every such meeting may be adjourned from time to time and from place to place as the committee shall think proper; and meetings and adjourned meetings of the committee shall be held at the said building in Seymour Street, except when the committee shall have appointed some other place, and then at such other place; and in order to constitute a meeting of the committee there shall be present at least ten members; and, except where otherwise provided, all questions at every meeting shall be determined by the majority of votes of the committee present, and in case of an equal division of votes the chairman of the meeting shall have a casting vote, in addition to his vote as one of the committee; and notice of the business to be brought before any meeting shall, at least six days before the day of such meeting, be given to every company party to the clearing system, or the secretary of every such company.

Appointment of
the chairman.

VII. And be it enacted, That until the first meeting of the committee which shall be held after the passing of this act the said George Carr Glyn, or other the chairman of the committee for the time being, shall continue in office; and at the first meeting of the committee which shall be held after the passing of this act, and in the month of March in each succeeding year, the committee present at the meeting shall, if they think fit, either continue in office the chairman for the time being, or choose another chairman; and a general meeting of the committee specially summoned shall have power to remove any chairman; and if any chairman shall die, or resign, or be removed, the committee shall have power, as soon as may be, to choose some other person to fill the vacancy thereby occasioned; but every chairman elected to supply a vacancy other than at a general meeting in the month of March in any year shall continue in office so long only as the person in whose place he shall be so elected would have been entitled to continue if such death, resignation, or removal had not happened: Provided always, that it shall not be necessary that the person chosen as chairman be a delegate of any of the companies parties to the clearing system; but in case he shall not be a delegate he shall not be entitled to vote on any question, unless in the case of

an equality of votes, when he shall be entitled to give the casting vote. 13 & 14 Vict. c. 33.

VIII. And be it enacted, That if at any meeting of the committee the chairman shall not be present the committee present shall choose one of their members to be chairman of such meeting. In the absence of chairman committee to elect a chairman.

IX. And be it enacted, That the said Kenneth Morison shall be the secretary to the committee until he die, or resign, or be removed; and that the committee shall have the power to remove him and all future secretaries; and that in the event of the resignation, or death, or such removal as aforesaid of any secretary, the committee shall appoint a secretary to the committee. Appointment of secretary.

X. And be it enacted, That the committee may from time to time appoint a treasurer, and remove such treasurer from his appointment, and prescribe and alter the duties of the office of treasurer, and take from the treasurer such security as they shall think fit, which security may be taken in the name or names of such person or persons as the committee approve of. Appointment of treasurer.

XI. And be it enacted, That any money which shall be received by the committee shall be held by the committee as trustees for the company or companies to whom the committee shall decide such money to be payable; but no member of the said committee shall be answerable for any such money as may be lost or withheld by reason of the misconduct, default, or insolvency of the treasurer, or of any banker or agent in whose hands the same may be, or by reason of any cause other than the personal misconduct of such member. As to monies received by committee.

XII. And be it enacted, That the accounts of the clearing system, and the balances due to and from the several companies parties thereto, shall be settled and adjusted by the secretary of the committee for the time being, which secretary shall also settle and determine the amount to be from time to time contributed to the funds of the clearing system by the companies parties thereto; and in case of any difference respecting such accounts the decision of the committee, to the effect that any balance or sum is payable by any company then or theretofore party to the clearing system, shall be final and conclusive, and such sum or balance shall be a debt due to the said committee. Accounts to be settled, and balance ascertained and declared by the committee.

XIII. And be it enacted, That the committee shall, out of the funds of the clearing system, pay all the expenses of the clearing system. Expenses to be paid out of the funds of the clearing system.

13 & 14 Vict.
c. 33.

clearing system, and all costs, charges, damages, and expenses which the members of the committee, or any or either of them, shall as such members or member, or which the secretary as nominal plaintiff or defendant, or other party, on behalf of the committee, bear, sustain, or be put to, and that the members of the committee and secretary shall be completely indemnified and saved harmless out of the funds of the clearing system, and by the companies parties to the clearing system, of, from, and against all action and actions, suit and suits, proceeding and proceedings, of any sort, costs, charges, damages, and expenses, to which they or any or either of them may in any way be subjected, as members or member of the committee, by reason of anything which they or he may *bonâ fide* do or omit to do, whether such deed or omission be within their powers or not.

Committee may
sue for balances
or sums due.

XIV. And be it enacted, That the committee may, by action of debt in the name of their secretary, recover from any company any balance or sum which such committee shall decide to be payable by such company, whether to any other company or on account of the clearing system, and whether such company be still at the time of such decision or has then ceased to be a party to the clearing system, and whether such sum or balance shall or shall not have been previously ascertained by the secretary to be payable.

Form of action
for the recovery
of such balances
or sums.

XV. And be it enacted, That the declaration for the recovery of such sum or balance may be in the form or to the effect of the form given in the schedule (A) to this act annexed, and that the directions contained in the said schedule for the use of the same shall be taken as part of this act.

Evidence.

XVI. And be it enacted, That if the defendants in such action shall plead that they never were indebted, then, on proof that the committee decided the sum in question to be payable by the defendants, and that the defendants were either at the time of such decision or at some previous time a party to the clearing system, and in the latter case, upon further proof that such sum was decided to be payable in respect of some transactions, matters, or expenses which happened or were sustained whilst the defendants were parties to the clearing system, the plaintiff shall be entitled to a verdict on that plea.

Plea.

XVII. And be it enacted, That the defendants in such action may plead any matter showing that they have since the time of the decision discharged the sum or balance so decided to be

payable, and shall not plead any plea with a plea denying the plaintiff to be secretary. 13 & 14 Vict.
c. 33.

XVIII. And be it enacted, That the committee shall cause notes, minutes, or copies, as the case may require, of all appointments made or contracts entered into by them, and of the orders and proceedings of all their meetings, to be duly entered in books to be kept by them for that purpose; and every such entry shall be signed by the chairman of the meeting at which such appointments, contracts, orders, or proceedings respectively took place, who shall add the word "chairman" to his signature, and which entries may be made and signed either at or after the meetings to which they respectively relate; and every entry purporting to be so signed shall be received as evidence in all courts, and before all judges, justices, and others, without proof of such respective meetings having been duly convened or held, or of the persons making or entering such orders or proceedings being members of the committee, or of the signature of such chairman, or of the fact of his having been chairman, all which last-mentioned matters shall be presumed till the contrary be proved. Entries in books.

XIX. And be it enacted, That on the trial of any such action, after it is proved to the satisfaction of the court or judge trying the cause that such company is or had once been such a party, the books kept by the committee shall be *prima facie* evidence of the truth of the matters therein stated and contained; and the secretary, although the nominal plaintiff, and the members of the committee, shall be competent witnesses, either for the plaintiff or for the defendants. Books of the committee to be *prima facie* evidence, and the committee and secretary to be competent witnesses.

XX. And be it enacted, That the committee may in all cases sue and be sued in the name of the secretary to the committee; and that in all proceedings at law and in equity, and in bankruptcy, or of any other sort, whether civil or criminal, the name of the secretary may be used instead of the names of the members of the committee; and proofs, in cases of bankruptcy, insolvency, or in winding-up affairs, may be made by the secretary for the committee. Committee may sue or be sued in the name of their secretary.

XXI. And be it enacted, That in any indictment or information for any felony or misdemeanour wherein it shall be necessary to state the ownership of any property whatsoever, whether real or personal, and the same shall either belong to the committee or be in their custody, or in the custody or possession of any officer, clerk, or servant of the committee, or of any person In criminal proceedings property of committee to be deemed the property of secretary.

13 & 14 Vict.
c. 33.

employed for the purpose or in the capacity of clerk or servant by the committee, or in or on any building or land used for the purposes of the clearing system, or shall be used or intended to be used for the purposes of the clearing system, it shall be sufficient to state such property to belong to the secretary of the committee.

Criminal proceedings to be prosecuted in name of secretary.

XXII. And be it enacted, That in any indictment for embezzlement, wherein it shall be necessary to state the party charged with the embezzlement to have been the clerk or servant of some master or masters, or to have been employed for the purpose or in the capacity of clerk or servant by some master or masters, and such masters shall have been the committee, it shall be sufficient in such indictment to name the secretary of the committee in every place in such indictment where the names of the members of the committee would, but for this enactment, be required to be inserted.

Service of notices.

XXIII. And be it enacted, That every notice or requisition on the business of the clearing system, or given pursuant to this act, shall be sufficient if it be in writing signed by the secretary of the committee, or secretary or other officer of the company giving the same, and if it be sent by the General Post addressed to the secretary of the company for whom the same is intended, in case such notice or requisition be intended for any company, or to the secretary at the principal office of the clearing system, in case such notice or requisition be intended for the committee; and proof of such notice or requisition being deposited in any public letter-box or receiving-house for letters, intended to be forwarded by the General Post, shall be deemed proof of the due service of such notice or requisition; and notices or requisitions for each member of the committee shall be sufficient if sent in manner aforesaid, addressed to him at the principal office of the company whom he represents.

Mode in which the companies and committee are to be described in legal proceedings.

XXIV. And be it enacted, That in all pleadings or proceedings, civil or criminal, when it shall be required to mention all the companies parties to the clearing system, or the committee, it shall be sufficient to mention the companies by the description of "The companies parties to the clearing system mentioned in the Railway Clearing Act, 1850," and to describe the committee by the description of "the clearing committee mentioned in the Railway Clearing Act, 1850," without stating the names of the individual companies and members.

Description of the secretary in

XXV. And be it enacted, That in all cases where the name

of the secretary to the committee shall be used under the authority of this act it shall be sufficient to name and describe him, and to state the authority for using his name, as in the form of declaration in schedule (A). 13 & 13 Vict.
c. 33.
legal proceedings.

XXVI. And be it enacted, That upon the death or removal of any secretary, no action or suit or other proceeding pending in his name, as plaintiff or defendant or otherwise, either on behalf of or against the committee, shall abate or be stayed, but as soon as another secretary shall be appointed, the name of such new secretary shall be thereafter used; and in an action at law such name shall, whether it be before or after judgment, be introduced by suggestion, to which no plea or demurrer shall be allowed; and the omission to make such suggestion, and an erroneous suggestion, shall be mere irregularities, and shall, on the application of the committee or of the party opposed to the committee, be rectified, but shall not otherwise be taken advantage of. Actions, &c. not
to abate on death
or removal of
secretary.

XXVII. And be it enacted, that all the costs, charges, and expenses of obtaining and passing this act, or incident thereto, shall be paid by the said committee out of the first monies which shall come to their hands after the passing of this act. Expenses of act.

XXVIII. And be it enacted. That this act may be called "The Railway Clearing Act, 1850," and shall be deemed to be a public act, and as such shall be judicially noticed. Short title and
public act.

SCHEDULE (A).

to wit. } *A.B.*, secretary to the clearing committee, and now
 } named by virtue of the Railway Clearing Act, 1850,
by *C.D.* his attorney, complains of *X.Y.*, who have been summoned to answer the said *A.B.* in an action of debt, for that the clearing committee have decided that the sum of £100 is payable by the defendants, as parties to the clearing system, by means whereof an action has accrued to the said committee to demand in the name of their secretary the said sum of £100, yet the defendants have not paid the same, to the damage of the said committee of £10, and thereupon the plaintiff, by virtue of the said act, brings suit.

DIRECTIONS FOR USING THE ABOVE FORM.

Substitute for *A.B.* the name of the secretary, and for *C.D.*

13 & 14 Vict.
c. 33.

the name of his attorney, and for *X.Y.* the name of the company defendant, and for the sums such sums as the case may require, and add the venue. Several counts may be inserted on the above model where several sums are sought to be recovered.

THE ABANDONMENT OF RAILWAYS ACT, 1850.*

(13 & 14 VICT. c. 83.)

An Act to facilitate the abandonment of railways, and the dissolution of Railway Companies in certain cases.—[14th August 1850.]

Railway company may make application to commissioners of railways to be allowed to abandon their undertaking.

WHEREAS divers joint-stock companies have been incorporated by Act of Parliament for making railways, and it has been found that such railways, or certain parts thereof, cannot be made or carried on with advantage either to the promoters thereof or to the public, and it is expedient therefore that facilities should be given for the abandonment of such railways or parts of railways, and for the dissolution of such companies, or some of them, and winding up the concerns thereof: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons, in this present Parliament assembled, and by the authority of the same, That if any company authorised by Act of Parliament heretofore passed to make a railway desire that the making and carrying on of such railway or some part thereof, whether commenced or not, be abandoned, such company may, by the authority and with the consent of the holders of three-fifths of the shares or stock of such company, represented in manner hereinafter mentioned at a general meeting of shareholders to be convened in manner hereinafter mentioned, make application in writing to the commissioners of the railways (a) setting forth the particulars of the railway or portion of the railway desired to be abandoned by them, and the grounds upon which such application is made.

(a) The application is since 14 & 15 Vict. c. 105 made to the Board of Trade, See this act, *post*.

* Amended by the Railway Companies Act, 1867, (30 & 31 Vict. c. 127,) ss. 31-35, text, *ante*.

II. And be it enacted, That it shall be lawful for the directors of any such railway company at any time to call a meeting of the shareholders thereof for the purpose of determining whether such application shall be made to the commissioners of railways, and so from time to time as they shall see fit.

13 & 14 Vict.
c. 83.

Directors may
call meeting to
consider such ap-
plication.

III. And be it enacted, That it shall be lawful for any number of shareholders of any such company, not being less than five, and holding in the aggregate not less than one-twentieth of the capital or stock of the company, consisting of shares or stock whereon all calls for the time being have been paid up, but exclusive of any shares or stock held by or in the names of the directors of the company or any of them, or by or in the name of any person in trust for the directors or any of them, or for the company, and which shareholders shall have paid all the calls then due on the shares held by them, by writing under their hands to require the directors of such company to call a meeting for the purpose aforesaid; and upon the receipt of any such requisition such directors shall forthwith proceed to call a meeting of the shareholders of such company on a day to be named in by them, not being less than fourteen nor more than twenty-eight days after the receipt of such requisition: Provided always, on the default of the directors to call and advertise such meeting within fourteen days after the receipt of the requisition, it shall be lawful for the requisitionists to call such meeting themselves, at a time and place to be appointed by them, of which fourteen days' notice shall be given by them by advertisement as hereinafter provided: Provided also, that when any meeting of any such company shall have been called pursuant to any such requisition as aforesaid, the directors of such company shall not be required to call any further meeting of such company upon any further requisition for the like object until twelve months shall have elapsed since the holding of such previous meeting.

Shareholder may
require directors
to call meeting.

IV. And be it enacted, That after any such meeting has been called by the directors, or after the receipt of any such requisition as aforesaid, it shall not be lawful for the directors to make any payments out of the monies of the company for the purposes of the railway proposed to be abandoned, except in discharge of *bonâ fide* debts or liabilities, or in performance of contracts or engagements previously entered into, and in payment of the expenses of calling and holding such meeting, nor to enter into any contracts or engagements on behalf of the company with respect to the railway so proposed to be abandoned, nor to make any calls, nor to register the transfer of any

After receipt of
requisition,
directors not to
make any pay-
ments, except
under existing
liabilities, nor to
enter into new
contracts, nor to
make new calls.

13 & 14 Vict.
c. 83.

shares, until the meeting called as aforesaid shall have determined whether such application shall be made.

Mode of calling
meeting, and
signifying the
consent of the
shareholders to
the application.

V. And be it enacted, That the calling of any such meeting shall be by public advertisement in the manner required or usually adopted for advertising the extraordinary general meetings of such company, and where such meeting is called by the directors of the company a circular letter shall be sent by the post addressed to each of the registered shareholders of such company, according to his registered address or other known address, seven clear days at least before the holding of such meeting, and stating that a general meeting of the shareholders of such company will be held at a time and place mentioned in such circular, for the purpose of determining whether application shall be made to the commissioners of railways that such railway, or the part thereof specified in such notice, may be abandoned, and requesting such shareholder to signify his assent to or dissent therefrom, which may be according to a form to be contained in such circular letter, which form shall be to the effect set forth in the schedule hereto, and such circular letter shall request such shareholder either to return such form, signed by him, in a letter addressed to the secretary of such company, or to attend such general meeting as aforesaid, and deliver the same, so signed by him, to the chairman thereof; and in the case of every such meeting, whether called by the directors or by such requisitionists as aforesaid, the shareholders may signify their assent to or dissent from the proposed application, either by attending such meeting in person, or by letter addressed to the secretary of the company, stating the assent or dissent of such shareholders, in a form which shall be to the effect of the form set forth in the schedule hereto, and signed by such shareholders respectively.

The number of
the shareholders
assenting or
dissenting to
be ascertained
by scrutineers,
and reported to
the chairman.

VI. And be it enacted, That at the meeting so to be called as aforesaid, the scrutineers to be appointed as hereinafter mentioned, shall cast up the amount of shares held by shareholders assenting to the making of such application, and the amount of shares held by shareholders dissenting therefrom, whether such assent or dissent have been signified by the shareholder sending to the secretary of the company such form as aforesaid, signed by him, or by such shareholder attending such meeting, and delivering in the same to the chairman thereof, and such scrutineers shall report to the chairman the amount of shares of the shareholders assenting to such application, and the amount of the shares of those dissenting therefrom, and the said chairman shall thereupon publicly announce to the meeting the said

Consent of Proprietors to Abandonment. lxxix

amounts respectively, and shall state whether or not the holders of three-fifths of the whole of such shares represented in manner aforesaid at the meeting consent to such application: Provided always, that in computing the amount of shares of the shareholders assenting or dissenting as aforesaid, no share shall be taken into account the holder whereof shall not have been duly registered, or who shall not have paid all the calls then due by him upon all the shares held by him, unless such calls shall have been made within three months prior to the holding of such meeting, or if such meeting be held pursuant to a requisition of shareholders as hereinbefore provided, then three months prior to the day on which such requisition was presented to the directors.

13 & 14 Vict.
c. 83.

VII. And be it enacted, That the chairman of the directors of such company, if present, or in his absence the deputy chairman, if any, of such directors, shall be the chairman of such meeting as aforesaid, or if neither such chairman nor deputy chairman of the directors be present, any shareholder chosen for that purpose by a majority of the shareholders present at the meeting shall be the chairman thereof.

Chairman of the
meeting.

VIII. And be it enacted, That at every such meeting the shareholders present thereat shall elect three shareholders of the company to be scrutineers for the purposes aforesaid, and in electing such scrutineers each shareholder shall have one vote only, and shall vote for one scrutineer only; and the decision of such scrutineers, or of any two of them, upon any of the matters hereby intrusted to them, shall be final in all respects.

Meeting to elect
scrutineers.

IX. And be it enacted, That for the purpose of receiving the report of the said scrutineers, the chairman of such meeting may, if he think fit, on the application of any one of such scrutineers, and he shall, if required by more than one of such scrutineers, adjourn such meeting to some time to be appointed by him, not less than one clear day nor more than seven clear days from the day of holding such meeting.

Adjournment of
meeting on
application of
scrutineers.

X. And be it enacted, That a certificate under the hand of the chairman of the meeting, stating that such meeting as aforesaid has been duly held, and such consent given as aforesaid in cases where the same is given, shall within one week after the day of holding such meeting be deposited in the office of the said commissioners of railways.

Certificate of the
chairman to be
evidence.

XI. Provided always, and be it enacted, That if it appear to any of the shareholders of any such company who shall have

Shareholders de-
siring abandon-

13 & 14 Vict.
c. 83.

ment, and complaining that the sense of the company has not been fairly ascertained, may apply to the commissioners.

signed any such requisition, or been present at any such meeting as aforesaid at which the proposal to apply to the said commissioners to authorise the abandonment of the whole or part of a railway shall have been negatived or alleged to be negatived, either that such meeting was not duly called, or that the sense thereof was not duly taken according to the true intent and meaning of this act, and that if such meeting had been duly called, and the sense thereof duly taken, the consent of such meeting to the proposed application would have been given, it shall be lawful for any such shareholders, not being less in number than five, and holding in the aggregate not less than one twentieth of the capital or stock of the company, consisting of shares or stock whereon all calls for the time being have been paid up, and which shareholders shall have paid all the calls then due on the shares held by them, to apply to the said commissioners, setting forth in writing the grounds on which they complain of the decision alleged to have been come to at such meeting as aforesaid, and praying that a further meeting may be called, and if it appear to the said commissioners (after hearing the parties complained of, if they desire to be heard,) that there is good reason to believe that if such meeting had been duly called, and the sense thereof duly taken, the consent of such meeting to the proposed application to the said commissioners would have been given, the said commissioners shall certify their judgment to that effect, and shall direct a further meeting to be called by the directors of such company at the time and place to be appointed by the said commissioners, and the said directors shall call such meeting accordingly, or in default thereof it shall be lawful for the shareholders who complained to the said commissioners of the proceedings of the former meeting to call such meeting, and all the provisions of this act shall apply to any further meeting so directed to be called in like manner as to any original meeting hereinbefore authorised or required to be called.

If meeting determine that application shall be made, directors not to proceed meanwhile.

XII. And be it enacted, That if at any such meeting any railway company shall determine, as hereinbefore mentioned, that such application as aforesaid shall be made, or if the said commissioners shall certify as aforesaid their judgment, that if such meeting had been duly called and the sense thereof duly taken, the consent of such meeting to the proposed application to the said commissioners would have been given, then, as from the date of the resolution so come to at such meeting, or the date of the said certificate, as the case may be, the directors of such company shall not have power to proceed any further with the making of the railway, or the part thereof so proposed to be

abandoned, until the decision of the commissioners of railways, with respect to such application be made, and then only in accordance with such decision. 13 & 14 Vict. c. 83.

XIII. And be it enacted, That if it appear to the said commissioners that there are sufficient grounds for entertaining such application, the said commissioners shall require and direct the company making the same to give notice of such application having been made, by advertisement inserted, in a form to be approved of by the said commissioners, once in the *London, Edinburgh, or Dublin Gazette*, according as the railway or part of the railway proposed to be abandoned is situate in *England, Scotland, or Ireland*, and once in each of three successive weeks in some newspaper published or circulating in each county in which any part proposed to be abandoned of such railway is situate, and affixed for three successive Sundays on the principal outer door of the church or churches of every parish in which any part of such railway where the whole is proposed to be abandoned, or in which any part proposed to be abandoned, is situate, and in *Ireland* such notice shall also be affixed to the Roman Catholic chapel, and where there shall be no such church or chapel, on some public or conspicuous place of such parish; and every such notice shall set forth within what time and in what manner any person who thinks himself aggrieved by any such proposed abandonment, and who desires to object thereto, may bring such objection before the commissioners. Commissioners of railways to direct advertisements of application.

XIV. And be it enacted, That, for the purpose of ascertaining the state and condition of the company making any such application, and of inquiring into the expediency of the proposed abandonment of railway, and of determining the terms and conditions on which the same may be authorised by them, it shall be lawful for the commissioners of railways, by themselves or by any officer appointed and specially empowered by them for that purpose, to inspect the books of accounts, minutes of proceedings, or any other books, papers, or documents in the possession or control of such company, and also, if they see fit so to do, to send, at the expense of such railway company, or at the expense of any person who applies to them for that purpose, an officer to be appointed by them to inspect the railway or proposed railway or work so proposed to be abandoned, and to collect evidence on the spot relative to such abandonment; and if any such company, or any of their officers or servants, shall refuse such inspection by the said commissioners, or any officer appointed and specially empowered by them for that purpose, or refuse or wilfully neglect to produce to the Commissioners to have power to inspect the company's books and other documents, and to send an officer for local inspection.

13 & 14 Vict.
c. 83.

said commissioners or any such officer, on demand, any books, papers, or documents in the possession or control of such company, every such company shall for every such refusal or neglect forfeit to Her Majesty the sum of twenty pounds, and a further sum of five pounds for every day during which such refusal or wilful neglect shall be continued.

Commissioners
of railways may
by warrant
authorise the
abandonment
of the railway
or part of rail-
way described
in the warrant.

XV. And be it enacted, That upon proof to the satisfaction of the said commissioners that such notice has been duly given, and after the expiration of the time therein appointed for bringing objections before the said commissioners, and after considering all the objections, if any, brought before them, the said commissioners may (a), if they think fit, and upon such terms and conditions as they think fit, by warrant under their seal, and signed by two or more of the said commissioners, authorise the abandonment of the railway or portion of railway described in such warrant.

(a) By clause (3) of s. 31 of the Railway Companies Act, 1867, (*post*), the Board of Trade has a discretion to refuse its warrant, except on condition of the money deposited as security for the completion of the railway, or the investments thereof, or the money secured by any bond conditioned for completion of the railway, being applied as part of the assets of the company. See *post*.

In considering
objections of
shareholders to
partial abandon-
ment, commis-
sioners to have
regard to local
circumstances.

XVI. Provided always, and be it enacted, That in considering the objections which may be made by any of the shareholders of any railway company to the proposed abandonment of a part only of the railway of such company, and in determining the terms and conditions on which the said commissioners may think fit to authorise any such partial abandonment, the said commissioners shall have regard to the local situation of the lands and residences of the shareholders so objecting with reference to the portion of railway proposed to be abandoned; and in the case of any such shareholders being original subscribers to the undertaking, and not being solicitors, agents, or engineers employed in promoting the same, and whose places of residence or lands are adjoining or near the line of the portion of railway so proposed to be abandoned, it shall be lawful for the said commissioners, if they think fit so to do, in any direction which (under the provision hereinafter contained) they may give for reducing the capital of the company authorised to construct such railway, to provide, at the request of any such last-mentioned shareholders, that the nominal amount of the shares held by them in such company may be reduced to the amount then already paid up by them respectively, or to such other extent as the said commissioners may think fit to order in that behalf, or the said commissioners may, at the like request, direct any such shares

Power to reduce
or cancel the
shares of the
objectors in
certain cases.

to be cancelled, and a part of the moneys that may have been paid up in respect of such shares, bearing such proportion to the whole as the said commissioners having regard to all the circumstances of the case shall think fit to determine, to be repaid to such shareholders.

13 & 14 Vict.
c. 83.

XVII. And be it enacted, That within one month after the day on which any such warrant as aforesaid is granted by the said commissioners, the railway company to which the same applies shall cause notice thereof to be inserted in the *London, Edinburgh, or Dublin Gazette*, according to the railway or part of railway mentioned therein is situate in *England, Scotland, or Ireland*, and once in each of three successive weeks in some newspaper published or circulating in each county in which any part of such abandoned railway is situate, and to be affixed for three successive Sundays on the principal outer door of the church or churches of every parish in which any such part of such railway is situate, and in *Ireland* such notice shall also be affixed to the Roman Catholic chapel, and where there shall be no such church or chapel, on some public or conspicuous place of such parish; and every such notice shall require all persons having any claims or demands upon the said company for compensation or otherwise, by reason of the abandonment of railway authorised by such warrant, to transmit the statement of such claims or demands to the secretary of such company, at the office or usual place of business of the same company, within four months from the date of such warrant.

Abandonment
of railway to be
advertised, and
demands on the
company for
compensation
to be sent in.

XVIII. And be it enacted, That, upon proof to the satisfaction of the said commissioners that notice of such warrant has been duly published in manner hereinbefore required, the said commissioners shall certify the same accordingly; and such certificate shall be received in all courts of justice or elsewhere as evidence that such notice was duly published as aforesaid.

Commissioners
of railways to
certify the due
publication of
the notice of
the warrant.

XIX. And be it enacted, That after the granting of any such warrant, and the publication of such notice thereof as aforesaid, the company shall (subject to the provisions hereinafter contained) be released from all liability to make, maintain, or work the railway mentioned in such warrant, or the part thereof thereby authorised to be abandoned, or to purchase any of the lands required for the making thereof, or to complete the purchase of any such lands for the purchase of which notice may have been given, or any contract entered into, by or on behalf of the company, or to complete any contract for or concerning the making, maintaining, or working of the railway so to be

After the grant-
ing of warrant
the company
to be released
from liability
to make the
railway.

13 & 14 Vict.
c. 83.

abandoned, or any other contract relating to the railway or part of railway so authorised to be abandoned which by reason of such abandonment cannot be performed: Provided always, that nothing in this act contained shall extend to release the company from any liability to complete the purchase of any land for the purchase of which any contract may have been entered into by or on behalf of the company, and which contract may have been in part performed, or by virtue or in pursuance of which a specified sum or price, as the consideration for the purchase of the lands thereby agreed to be sold to or taken by the company, shall have been fixed or ascertained previously to the passing of this act, notwithstanding the time for the completion of the purchase named in such contract shall have been subsequently extended by agreement or arrangement with the company.

Compensation to
be made where
contracts have
been entered
into or notice
given.

XX. Provided always, and be it enacted, That in every case in which before the granting of any such warrant any notice hath been given or contract entered into by or on behalf of the company named therein for purchasing any lands which such company were by the acts relating thereto empowered to purchase for the purpose of constructing the railway or portion of railway so authorised to be abandoned, and from which contract such company would be relieved under the provisions hereinbefore contained, or where any contract hath been entered into for or concerning the constructing, maintaining, or working of the railway or part of railway so authorised to be abandoned, or any other contract relating thereto, which by reason of such abandonment cannot be performed, the company shall make to the owners or occupiers of and other parties interested in such lands, or being parties to such contracts as aforesaid, compensation, to be determined by arbitration as hereinafter mentioned, for all injury or damage, if any, sustained by such owners, occupiers, and other parties by reason of such purchase not being completed pursuant to such notice, or by reason of such contract not being performed.

Compensation to
adjoining land-
owners in lieu
of accommoda-
tion works.

XXI. And be it enacted, That where any railway or part of a railway so authorised to be abandoned shall have been then made or commenced, such company shall make to the owners and occupiers of the lands adjoining the railway or part of a railway so commenced or made, and authorised to be abandoned, compensation, to be determined by arbitration as hereinafter mentioned, for all such injury or damage, if any, as shall be sustained by such owners or occupiers by reason of the omission to make gates, passages, drains, water-courses, bridges, and

such other works, for the accommodation of lands adjoining the railway, as such company would have been required to make if such railway had not been allowed to be abandoned.

13 & 14 VICT.
c. 83.

XXII. And be it enacted, That where the line of any railway so authorised to be abandoned shall have been wholly or partially laid out, and any road shall have been carried across such line of railway by means of a bridge or tunnel over or under such railway, which bridge or tunnel the company to whom such railway belonged would, in case the same had not been abandoned, have been liable to keep in repair, then in every such case, except where such bridge or tunnel shall, with the permission of the said commissioners, be by such company removed, and such road restored to the like or an equally convenient and good state as the same was in before it was interfered with by the makers of such railway, to the satisfaction (in case of difference between such company and the owner or persons having the management of such road) of the commissioners of railways, such company shall pay to the owner of such road, if it be a private road, or to the trustees, surveyors of highways, or other persons having the management of such road, if it be a turnpike or other public road, a sum of money, to be determined by arbitration as aftermentioned, in lieu and discharge of their liability to keep such bridge or tunnel, and also the roadway over the same in repair.

Where roads have been carried across abandoned line of railway by means of a bridge or tunnel, company to make compensation, in lieu of keeping bridges, &c., in repair, except where the road is restored to its former state.

XXIII. And be it enacted, That every sum so to be paid as last aforesaid to such trustees, surveyors, or other persons as aforesaid, shall be by them forthwith paid over to the treasurer of the county where the bridge or tunnel in respect of which such sum was paid is situate, and shall be by him invested in consolidated bank annuities or other public securities, and the dividends or income thereof shall, until Parliament shall otherwise provide, be applied in the maintenance of the bridge or tunnel in respect whereof the same was paid, in such manner as the justices in Quarter Sessions having jurisdiction where such bridge or tunnel is situate shall order.

Compensation to trustees and overseers of public roads, how to be applied.

XXIV. And be it enacted, That every sum so to be paid as last aforesaid in *Scotland* to such trustees or other persons as aforesaid, shall be by them paid into bank, and the interest to arise thereon shall, until Parliament shall otherwise provide, be applied in the maintenance of the bridge or tunnel in respect whereof the same was paid, in such manner as the sheriff of the county in which such bridge or tunnel is situate, in case of any difficulty arising, shall direct.

Application of moneys paid.

13 & 14 Vict.
c. 83.

Amount of compensation to be settled by arbitration, pursuant to 8 & 9 Vict. c. 20, and 8 & 9 Vict. c. 33.
Claims for compensation to be made within six months after publication of warrant for abandonment.

XXV. And be it enacted, That the amount of the compensation so to be made in the several cases aforesaid shall be determined, in case of difference, by arbitration, in the manner provided by the Railways Clauses Consolidation Act, 1845, or the Railways Clauses Consolidation Act, (Scotland,) 1845, as the case may require, and for that purpose all the clauses of the said Railways Clauses Consolidation Acts with respect to the settlement of disputes by arbitration shall be deemed to be incorporated with this act: Provided always, that no such railway company shall be liable to make any compensation in respect of damage alleged to have been sustained by reason of the abandonment of the railway or part of the railway, or the non-completion of any contract of such company in any of the cases aforesaid, unless the claim for such compensation shall have been made within six months after the publication in the *Gazette* of the notice of the warrant for such abandonment as hereinbefore provided.

Company to be still liable for damage occasioned by their entry on lands for taking levels, &c., pursuant to 8 & 9 Vict. c. 18, or 8 & 9 Vict. c. 19.

XXVI. Provided also, and be it enacted, That the authority so as aforesaid given for abandoning the making of any such railway or part of a railway shall not prejudice or affect the right of the owner or occupier of any lands to receive from such company compensation for any damage that may have been occasioned by the entry of such company upon such lands, for the purpose of surveying and taking levels, and of probing or boring to ascertain the nature of the soil, or of setting out the line of the railway, pursuant to the provisions for that purpose in the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Act, (Scotland,) 1845, contained.

Lands purchased by the railway company to be sold within a limited time.

XXVII. And be it enacted, That all the lands acquired by such company for the purposes of the railway or part of railway so authorised to be abandoned shall be sold by such company within the time limited or prescribed for that purpose in the warrant authorising the abandonment of such railway, and if no time be therein prescribed for that purpose, then within two years from the date of such warrant, in the manner prescribed by the said Lands Clauses Consolidation Acts with respect to the sale of superfluous lands; and for that purpose all the clauses of the said last-mentioned acts with respect to the lands acquired by the promoters of the undertaking under the provisions of their special act, but which are not required for the purposes thereof, shall be deemed to be incorporated with this act: Provided always, that the offer to be made by the railway company pursuant to the said acts to sell such lands to the person entitled to the lands from which the same were severed shall

be made at a price or sum not greater than the price or sum at which such lands were purchased by such company.

13 & 14 Vict.
c. 83.

XXVIII. And be it enacted, That when the said commissioners of railways, by any such warrant as aforesaid, authorise the abandonment of a part only of the railway of any railway company, they may, if they think fit, require that the capital authorised to be raised by such company in respect of such railway shall be reduced to such extent and in such manner as the said commissioners think fit, and so that such reduction do not bear greater proportion to the whole capital so authorised to be raised than the cost of the part of the railway so authorised to be abandoned would have borne to the cost of the whole railway; and they may also, if they think fit, in like manner reduce the amount which such company are authorised to borrow on mortgage or bond, and every such reduction shall be expressed in the said warrant; and in every such case the capital of such company, and their power of borrowing money, shall be reduced and limited in conformity with the directions for that purpose contained in such warrant; and such company shall have all the same powers for enforcing the payment of calls in respect of the shares in the capital when reduced in the manner required by the said commissioners, and for enforcing the forfeiture of any such shares in default of payment of such calls, as such company would have had in respect of the original capital of such company if this act had not been passed: Provided always, that nothing herein contained shall authorise the said company to reduce or interfere with any amount of capital paid up or called for before the eleventh day of February one thousand eight hundred and fifty, and entitled to any preferential or guaranteed dividend or interest.

Where part of a railway is authorised to be abandoned, the commissioners may require the capital to be reduced.

XXIX. And be it enacted, That after the granting of any such warrant as aforesaid for the abandonment of the whole railway of any railway company, the powers of such company for the construction, maintenance, and management of such railway shall cease, and such company shall continue to exist only for the purpose of winding up their affairs, and they shall accordingly, subject to the provisions herein contained with respect to the sale of lands acquired by such company for the purposes of their railway, proceed with all convenient speed to collect and to convert into money all their property and effects, and shall in the first place pay and satisfy all their debts and liabilities, and after full payment and satisfaction thereof, shall distribute the surplus funds among the shareholders of the company in proportion to their shares and interests therein, and for

After warrant for abandonment of the whole railway the powers of the company are to cease, except for winding-up.

13 & 14 Vict.
c. 83.

the purposes aforesaid all the powers of such company shall continue in full force and effect; and when and so soon as the same shall have been fully accomplished such company shall be dissolved, and cease to exist.

Provisions of
11 & 12 Vict.
c. 46, and
12 & 13 Vict.
c. 108, to
apply to cases
where order of
winding-up was
made prior to
passing of said
acts.

XXX. And be it enacted, That, notwithstanding the provision in the Joint Stock Companies Winding-up Amendment Act, 1849, excepting railway companies incorporated by act of parliament from the application of the Joint Stock Companies Winding-up Act, 1848, the said two several acts shall nevertheless apply to any railway company incorporated by act of Parliament in respect of which an order may have been made by the Court of Chancery for winding-up the affairs of such company previous to the passing of the said Joint Stock Companies Winding-up Amendment Act, 1849, and the proceedings for winding-up the same shall proceed and be carried on under the said Joint Stock Companies Winding-up Act, 1848, and the said Joint Stock Companies Winding-up Amendment Act, 1849, or either of them.

When warrant
has been granted
for abandoning
the whole rail-
way, sharehold-
ers may petition
for winding-up,
under the 11 &
12 Vict. c. 45,
notwithstanding
anything in 12 &
13 Vict. c. 108.

XXXI. And be it enacted, That where any such warrant as aforesaid shall have been granted for the abandonment of the whole railway of any railway company in *England or Ireland*, any shareholder of such company may present a petition under the Joint Stock Companies Winding-up Act, 1848 (*a*), or any act for the amendment of such act, for the winding-up of the affairs of such company under the said act, and for that purpose the railway company whose railway is so authorised to be abandoned shall, if the court shall think fit so to order, (notwithstanding anything to the contrary thereof in the said Joint Stock Companies Winding-up Act, or in the Joint Stock Companies Winding-up Amendment Act, 1849,) be deemed to be a company to which the said act applies.

(*a*) The Companies Act, 1862, is substituted for this act by s. 31 of the Railway Companies Act, 1867, *post*.

Court of Session,
upon petition,
may sequester
any railway com-
pany for the
abandonment
of which a war-
rant has been
granted

XXXII. And be it enacted, That where any such warrant as aforesaid shall have been granted for the abandonment of the whole railway of any railway company in *Scotland*, any shareholder of such company may present a petition to the Court of Session, praying the said court to sequester such company, and it shall thereupon be lawful for the said court to issue a deliverance awarding sequestration of such company, and to appoint a factor, who shall take possession of and recover the estate of such company, and realise and manage the same, for the purposes of this act, and for winding-up and distributing the same

with due regard to the rights and interests of the creditors and shareholders, and of all others concerned therein. 13 & 14 Vict. c. 83.

XXXIII. And be it enacted, That it shall be competent to the said court to establish, by acts of sederunt to be passed by them, all such rules and regulations as may be necessary in relation to the summary statement, discussion, and adjudication of all claims at the instance of creditors, shareholders, and other parties against such company, and by such rules and regulations to apply, as far as may be practicable and expedient, towards the purposes of this act, the provisions of an act passed in the session of Parliament holden in the second and third years of the reign of her present Majesty, intituled, "An Act for regulating the Sequestration of the Estates of Bankrupts in *Scotland*;" and it shall be competent to the said court so also to establish all such other rules and regulations as may be necessary for carrying fully into effect the purposes of this act. Court of Session to establish rules for adjustment of claims. 2 & 3 Vict. c. 41.

XXXIV. And be it enacted, That in the event of the affairs of any such company being wound up under any such petition, the compensation hereinbefore directed to be given to the owners and occupiers of lands and others in respect of the damage sustained by them by reason of such abandonment in the cases hereinbefore mentioned, or by reason of the noncompletion of any such contract as aforesaid, or otherwise, shall be deemed a demand claimed from, and when ascertained in the manner provided by this act a debt due from, such company, and the party by whom such compensation is claimed shall be deemed a "creditor," in *England* or *Ireland*, within the provisions of the said Joint Stock Companies Winding-up Act, or, in *Scotland*, within the provisions of the said recited act of the second and third years of the reign of her present Majesty; and in case any lands purchased by such railway company shall be sold by the official manager under the said act, they shall be sold in the manner and subject to the provisions contained in this act. In case of petition for winding-up, landowners are to be deemed creditors in respect of the compensation given by this act.

XXXV. Provided always, and be it enacted, That this act, or any proceeding thereunder, shall not prejudice or affect any action or suit or other proceeding at law or in equity commenced before the eleventh day of February, one thousand eight hundred and fifty (a), or any action or suit brought in connexion with and during the dependence of and involving the same matter with such action or suit, nor any action, suit, or other proceeding against a company which shall not have obtained a Act not to affect actions or suits commenced before 11th Feb. 1850 (a).

13 & 14 Vict.
c. 83.

warrant authorising the abandonment of the railway or part of a railway in respect of which such action, suit, or other proceeding shall be instituted, unless such company shall, within three days after notice for that purpose from the party suing them, give such party notice of their intention to apply for such warrant, and shall obtain the same, and serve notice thereof on such party within three calendar months thereafter, but all such actions and suits and other proceedings shall be proceeded with, and judgments recovered, and rules, orders, and decrees made therein shall be enforced, as if this act had not been passed, save only that the same, after notice given by the company of their intention to abandon as aforesaid, shall be suspended for three calendar months, if the warrant be refused, or be not obtained within that time.

(a) For this date the 21st May 1867 is now to be read. See Railway Companies Act, 1867, s. 31, *post*.

Nothing herein
to authorise
abandonment
of any railway
agreed to be con-
structed without
consent.

XXXVI. Provided always, and be it enacted, That nothing in this act contained shall extend or be construed to extend to authorise the abandonment by any company of any railway or portion of a railway, or other works, which such company has agreed under its corporate seal to make and construct, according to any agreement entered into either with any individual or with any other company, unless such individual or company shall consent in writing to such abandonment.

Commissioners
to report to Par-
liament where
abandonment
authorised by
them.

XXXVII. And be it enacted, That in each case in which the said commissioners authorise the abandonment of the whole or a portion of a railway, they shall, within ten days after issuing their warrant for that purpose, if Parliament be then sitting, or if not, then as soon thereafter as Parliament meets, lay before both houses of Parliament a copy of every such warrant, accompanied by such report and observations as shall in the judgment of such commissioners set forth and explain the reasons for their award and warrant in every such case as aforesaid.

Interpretation of
terms.

XXXVIII. And be it enacted, That the following words and expressions in this act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include also the singular number;

Words importing the masculine gender shall extend to females:

The word "person" shall include body corporate :

13 & 14 Vict.
c. 83.

The word "lands" shall include messuages, tenements, and hereditaments :

The word "railway" shall include all works, buildings, and undertakings authorised to be constructed or carried on in connexion with the railway or belonging thereto :

The word "shares" shall include stock :

The word "month" shall mean calendar month.

XXXIX. And be it enacted, That in citing this act in other short title. acts of Parliament, and in legal and other instruments and proceedings, it shall be sufficient to use the expression "The Abandonment of Railways Act, 1850."

XL. And be it enacted, That this act may be amended or Act may be amended, &c. repealed by any act to be passed in the present session of Parliament.

SCHEDULE referred to by the foregoing act (s. 5).

(1.) Name of Railway.	(1.) Name of Shareholder.	(1.) No. and Amount of Shares or Stock held by him.	(2.) Whether assenting or dissenting.

(1.) The secretary will insert these particulars.

(2.) In this column the shareholder will write the word "assenting" or "dissenting," as the case may be, and sign his name thereunder.

PRELIMINARY INQUIRIES ACT, 1851.

(14 & 15 VICT. C. 49.)

An Act to repeal an Act of the eleventh and twelfth years of her present Majesty, for making Preliminary Inquiries in certain cases of applications for local acts, and to make other provisions in lieu thereof.—[1st August 1851.]

11 & 12 Vict. c.
129.

WHEREAS an act was passed in the session of Parliament holden in the eleventh and twelfth years of the reign of her present Majesty, chapter one hundred and twenty-nine: And whereas it is expedient to repeal the said act, and to make other provisions in lieu thereof: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same:

Recited act re-
pealed.

I. That in respect of all future applications to Parliament for local acts the said recited act shall be and the same is hereby repealed.

Where works
proposed on
tidal lands,
Admiralty may
require state-
ments, &c.

II. Whenever application shall be made to Parliament for a bill whereby power is sought to construct any works on the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, or to construct any bridge, viaduct, or other work across any creek, bay, arm of the sea, or navigable river, or to construct any work affecting the navigation of any harbour, port, tidal water, or navigable river, it shall be lawful for the Lord High Admiral, or for the Lords Commissioners for executing the office of Lord High Admiral, to require the promoters of such bill to deposit at the office of the Admiralty, in addition to the plans, sections, or other documents which may have been deposited at such office in compliance with the standing orders of either House of Parliament, all such statements and other documents as the said Lord High Admiral or Lords Commissioners shall deem necessary to explain the objects of the intended application to Parliament, and the proposed interference with such tidal lands or navigation, as the case may be.

Admiralty may
appoint inspec-
tors.

III. It shall be lawful for the said Lord High Admiral or

Lords Commissioners, if they shall consider the same necessary or expedient, but not otherwise, to appoint a competent person or persons to be an inspector or inspectors, for the purpose of inquiring, in such manner and at such time and place as they shall direct, into all such matters as they shall deem necessary to enable them to report to Parliament their opinion upon every such bill touching the jurisdiction or authority of the Lord High Admiral.

14 & 15 VICT.
c. 49.

IV. For the purposes of such inquiry the said inspector or inspectors may, by summons under his or their hands, summon before him or them any person having the custody of any map, survey, or book made or kept in pursuance of any act of Parliament, to produce such map, survey, or book for his or their inspection, and the said inspector or inspectors may summon, in manner aforesaid, any other person whose evidence shall, in the judgment of the said inspector or inspectors, be material to his or their inquiries, and pay or allow to every such person so summoned by him or them the reasonable charges of his attendance; and the said inspector or inspectors shall also have power to administer an oath to all persons who may be examined by him or them touching the premises.

Inspectors may
summon wit-
nesses and ex-
amine them
upon oath.

V. Any person, being summoned by such inspector or inspectors, who, after the delivery to him of such summons as aforesaid, or of a copy thereof, shall wilfully neglect or refuse to attend in pursuance of such summons, or to produce such maps, surveys, books, or other documents as he may be required to produce under the provisions hereinbefore contained, or to answer upon oath or otherwise such questions as may be put to him by such inspector or inspectors under the powers herein contained, shall be liable to forfeit and pay a penalty not exceeding five pounds, which may be recovered before any two or more justices having jurisdiction within the town, district, or place wherein such inquiry shall be held; and on conviction of the offender, and in default of payment of any such penalty, such justices shall be empowered and required to cause the same to be levied by distress and sale of the goods and chattels of the offender, by warrant under their hands and seals; and such penalty shall be paid to the treasurer of the county within which such conviction shall take place in aid of the county rate; provided that no person, other than the promoters of the proposed act, or their agents, shall be required to attend in obedience to any summons, unless the reasonable charges of his attendance be paid or tendered to him, nor to travel in obedience thereto more than ten miles from his usual place of abode.

Penalty for non-
attendance or
refusing to an-
swer questions.

14 & 15 Vict.
c. 49.

Admiralty may
take security for
payment of ex-
penses of in-
quiry.

VI. Before instituting any such inquiry the said Lord High Admiral or Lords Commissioners may, if they think fit, require and take such security for the payment of the whole or any part of the costs, charges, and expenses to be incurred by them in respect of such inquiry (including the remuneration of the inspectors) as to them shall seem fit; and whenever any such security is given, the costs, charges, and expenses in respect whereof it is given shall, to such amount as shall be certified by the said Lord High Admiral or Lords Commissioners, (not exceeding the extent or amount of such security,) be a debt due to Her Majesty from the person or persons respectively by whom the same is entered into.

Petitioners for
private bill to
be deemed the
promoters.

VII. The persons whose names shall be subscribed to the petition for any private bill shall be deemed to be promoters of such bill for all the purposes of this act, notwithstanding the persons subscribing such petition shall have signed for or on behalf of any other party.

Form of citing
the act.

VIII. In citing this act in other acts of Parliament, and in legal and other instruments, it shall be sufficient to use the expression, "The Preliminary Inquiries Act, 1851."

14 & 15 VICT. c. 44.

An Act to repeal the Act for constituting Commissioners of Railways.—[7th August 1851.]

9 & 10 Vict. c.
105.

WHEREAS an act was passed in the session holden in the ninth and tenth years of Her Majesty (chapter one hundred and five) for constituting commissioners of railways: And whereas it is expedient that the said act should be repealed, and provision be made for the exercise and performance of the powers and duties which since the passing of the said act have been vested in or imposed on the said commissioners: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Repealed Act re-
pealed, and
powers, &c.,

I. From and after the tenth October one thousand eight hundred and fifty-one the said act should be repealed, and all

powers, rights, authorities, and duties vested in or exercised or performed by the commissioners of railways under any act (a) passed since the passing of the said recited Act, or which may be passed during the present session of Parliament, shall be transferred to and vested in and performed by the Lords of the Committee of Her Majesty's Privy Council for Trade and Foreign Plantations as if they had been named in such acts instead of the said commissioners; and all proceedings pending before the said commissioners on the said tenth of October, or carried on under their authority, shall be continued and carried on by and before the Lords of the said Committee, who shall have, exercise, and perform the same powers, rights, authorities, and duties in respect of all such proceedings as might have been exercised or performed by such commissioners in case this act had not been passed.

14 & 15 VICT.
c. 44.
of commissioners
of railways under
subsequent acts
transferred to
Board of Trade.

(a) The Board of Trade are to have all the same powers in cases of railways constituted by their certificate under the Railways Construction Facilities Act, 1864, *post*.

II. It shall be lawful for the Lords of the said Committee, with the approval of the Commissioners of Her Majesty's Treasury, to continue, for the transaction of the business transferred to the Lords of the said Committee under this act, all or any of the officers and servants appointed by the said commissioners of railways, and from time to time, with such approval, to remove such officers and servants, or any of them.

Power to continue officers appointed by commissioners of railways.

III. Where by any act relating to railways or to any railway, the commissioners of railways or the Lords of the said Committee are empowered or required to make or issue any appointment, authority, determination, order, requisition, regulation, certificate, or notice, or to do any other act, the Lords of the said Committee may, after the said tenth of October, signify such appointment, authority, determination, order, requisition, regulation, certificate, notice, or other act by a written or printed document, signed by one of the joint secretaries of the Lords of the said Committee, or by some assistant secretary, or other officer appointed by them to sign documents relating to railways; and every appointment, authority, determination, order, requisition, regulation, certificate, notice, or other act signified by a written or printed document purporting to be so signed as aforesaid, shall be deemed to have been duly made, issued, or done by the Lords of the said Committee; and every such document shall be received in evidence in all courts and before all justices and others, without proof of the authority or signature of such secretary or other officer, or other proof whatsoever, until it be shown that such document was not signed by the authority of the Lords of the said Committee.

Appointments, orders, &c., of the Board of Trade how to be signified.

THE RAILWAYS (IRELAND) ACT, 1851.*

(14 & 15 VICT. c. 70.)

An Act to alter and amend certain Provisions of the Lands Clauses Consolidation Act, 1845, so far as relates to Ireland.—
[7th August 1851.]

WHEREAS, on account of circumstances connected with the tenure of land in Ireland, the provisions of the Lands Clauses Consolidation Act, 1845, are found to be unsuited to the existing condition of that country, and it is expedient that some provision should be made for ascertaining the purchase-money or compensation to be paid by railway companies in Ireland for the lands required for their undertakings, and for determining differences with respect to the works to be made and maintained by such companies for the accommodation of the owners and occupiers of lands adjoining such railways: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

I. In citing this act in other acts of parliament, legal instruments, proceedings at law or in equity, and all other instruments and proceedings whatsoever, it shall be sufficient to use the expression, "The Railways Act, (Ireland,) 1851."

Act to apply to railways in Ireland authorised in this session, &c., and to those heretofore authorised, except 13 & 14 Vict. c. 29; 13 & 14 Vict. c. 45; 13 & 14 Vict. c. 76; 13 & 14 Vict. c. 88; 14 & 15 Vict. c. 110; 14 & 15 Vict. c. 103.

II. This act shall apply to every railway in Ireland authorised to be made by any act passed in this session of Parliament, or which shall hereafter be passed, and which shall authorise the purchase or taking of lands for such railway, and also to every railway or portion of a railway in Ireland by any act heretofore passed authorised to be made in relation to which the compulsory powers for taking lands are still in force, and this act shall be incorporated with and form part of the acts authorising the said undertakings: Provided always, that this act shall not apply to the railways authorised to be made by "The Waterford and Limerick Railway Amendment Act, 1850," "The

* Amended and made perpetual by 23 & 24 Vict. c. 97, *post*.

Dublin and Drogheda Railway Act, 1850, "The Dundalk and Enniskillen Railway Act, 1850," and "The Midland Great Western Railway of Ireland (Deviation and Amendment) Act, 1850," "The Waterford and Limerick Railway Deviation Act, 1851," and "The Killarney Junction Railway Act, 1851," "The Longford Line and Liffy Branch, 13 & 14 Vict.," or to which the provisions of such acts respectively are applicable, and shall not in anywise interfere with or affect the provisions of such acts.

& 15 Vict.
c. 70.

III. The clauses of "The Lands Clauses Consolidation Act, 1845," with respect to the purchase and taking of lands otherwise than by agreement, except sections sixteen and seventeen of the said act, shall not be applicable or in force with respect to any railway or portion of a railway in *Ireland* to which this act applies.

IV. When and so often as any company authorised to make a railway to which this act applies shall require to purchase or take any lands which they are by the special act authorised to purchase or take, the company shall cause to be made out, and to be signed by their engineer and secretary, maps or plans and schedules of the lands so required, (and for the purchase of which lands, or of all the several interests in which lands, the company shall not have contracted,) and also of the works which the company propose to make and maintain for the accommodation of lands adjoining the railway, (and for compensation in lieu of which the company shall not have contracted,) together with the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of the said lands respectively, so far as the same can be reasonably ascertained, with estimates of the gross annual value and the value in fee of such lands so required to be purchased or taken as aforesaid, and for the purchase of which, or of all the several interests in which, the company shall not have contracted, and the separate and distinct value of each such interest which the company shall not have contracted to purchase, so far as the same can be reasonably ascertained, (taking into consideration damage by severance, and any other matters by the Lands Clauses Consolidation Act, 1845, required to be considered, if necessary;) and every such map or plan shall be upon a scale of not less than one inch to every two hundred feet; and all lands, buildings, yards, and court-yards, and lands within the curtilage of any building, and ground cultivated as a garden, shall be marked thereon with distinct numbers corresponding with the numbers marked upon the parliamentary plans of the railway, and shall have put thereon

Company to deliver maps, schedules, and estimates at the office of Commissioners of Public Works, and deposit copies with clerks of the peace and clerks of unions.

14 & 15 VICT.
c. 70.

a distinct valuation to each number, and all bridges, roads, and other works proposed to be made for the use and accommodation of the owners, lessees, and occupiers of the lands adjoining the railway shall also be marked on the said maps or plans; and the company shall deposit such maps or plans, schedules, and estimates, at the office of the Commissioners of Public Works in Ireland, and a copy of such maps or plans, schedules and estimates, or so much thereof as relates to every county in or through which the railway is proposed to be made, with the clerk of the peace of each such county, and a copy of so much of the said maps or plans, schedules and estimates, as relates to each electoral division in which any such lands shall be situate, with the clerk of the poor-law union in which every such electoral division is situate.

Commissioners
of Public Works
to appoint an
arbitrator, on
application of
company.

V. After such deposit at the office of the said commissioners as aforesaid, it shall be lawful for the said commissioners, upon the application of the company, to appoint an arbitrator between the company and the persons interested in the lands to which such maps or plans, schedules and estimates relate, and such arbitrator shall, in relation to the lands required and the works to be made and maintained by the company, as herein mentioned, be the arbitrator under this act; and if any such arbitrator die, or refuse, decline, or become incapable to act, the said commissioners may appoint an arbitrator in his place, who shall have the same powers and authorities as the arbitrator first appointed.

Arbitrator may
call for docu-
ments, and ad-
minister oaths.

VI. The arbitrator may call for the production of any documents in the possession or power of the company, or of any party making any claim under the provisions of this act, which such arbitrator may think necessary for determining any question or matter to be determined by him under this act, and may examine any such party and his witnesses, and the witnesses for the company, on oath, and administer the oaths necessary for that purpose.

Arbitrator to
make and sub-
scribe declara-
tion.

VII. Before any arbitrator shall enter upon any inquiry he shall, in the presence of a justice of the peace, make and subscribe the following declaration; that is to say,

"I, A. B., do solemnly and sincerely declare, That I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the act, [naming this act.]

A. B.

"Made and subscribed in the presence of
And such declaration shall be annexed to the award when

made; and if any arbitrator, having made such declaration, wilfully act contrary thereto, he shall be guilty of a misdemeanour. 14 & 15 Vict. c. 70.

VIII. Upon the first appointment of an arbitrator as aforesaid, the said commissioners shall deliver to such arbitrator the maps or plans, schedules and estimates, deposited at their office as hereinbefore required; and the company shall forthwith, after such appointment, publish notice of such appointment, and of such deposits as hereinbefore directed with such clerk of the peace and clerks of poor-law unions as aforesaid, once in the *Dublin Gazette*, and once in each of three successive weeks in some one and the same newspaper circulated in the county in which the lands are situate, stating the times and places of such deposits, and requiring all persons claiming to have any right to or interest in the lands required for the purposes of the railway, and specified in such maps or plans, or to have compensation for any injury to any lands injuriously affected by the execution of the works of the company, or to have any works made by the company for the accommodation of lands adjoining the railway, to deliver to the arbitrator, on or before a day fixed by the arbitrator and named in such notice, (and which day shall not be earlier than thirty-one days (a) from the date of the insertion of the last of such newspaper notices,) a short statement in writing of the nature of such claim; and upon the appointment of any arbitrator in the place of an arbitrator dying, or refusing, declining, or becoming incapable to act, all the documents relating to the matter of the arbitration which were in the possession of such arbitrator shall be delivered to the arbitrator appointed in his place, and the company shall publish notice of such appointment in the *Dublin Gazette*.

Maps, &c. deposited with Commissioners of Public Works to be delivered to arbitrator. Notice of appointment of arbitrator, &c., to be published.

(a) Twenty-one days is, by 23 & 24 Vict. c. 97, to be the time for the delivery of the statement of claim to the arbitrator.

IX. The arbitrator shall, after the expiration of the period within which such claims are required to be delivered to him as aforesaid, proceed to inquire into and adjudicate upon the value of the lands required for the purposes of the railway, and specified in such maps or plans, and the several interests in such lands, in respect of which no agreement shall have been come to between the company and the persons entitled thereto, and the purchase-money to be paid for such lands, and the compensation to be paid for injury to any lands injuriously affected by the execution of the works of the company, and to inquire and determine what works should be made and maintained by the company for the accommodation of lands ad-

Arbitrator to adjudicate upon compensation to be paid for lands and upon accommodation works.

14 & 15 Vict.
c. 70.

joining the railway; and the arbitrator shall, after due inquiry and examination, frame a draft award setting forth the price or compensation to be paid by the company in respect of the several interests in the lands so required and specified or injuriously affected, and the works to be made and maintained by the company for the accommodation of lands adjoining the railway; and where any inquiry relates not only to the value of the lands to be purchased, but also to compensation claimed for injury done or to be done to any lands held therewith, the arbitrator shall award separate and distinct sums to be paid for the purchase of such lands, or of any interest therein to which the inquiry may relate, and for the damage (if any) to be sustained by reason of the severing of the lands taken from the other lands, or otherwise injuriously affecting such other lands by the exercise of the powers of the company; and such draft award, and copies thereof, or of so much thereof as relates to lands in the respective counties and electoral divisions shall be deposited as hereinbefore directed concerning the said maps or plans, schedules and estimates, and copies thereof, or of so much thereof as aforesaid; and the arbitrator shall cause notice of such award to be given to all persons entitled to payment or compensation under the same, or who shall have been heard before such arbitrator as claimants for compensation, and also shall cause notice to be published as hereinbefore directed concerning notice of the deposit of copies of the said maps or plans, schedules and estimates, or so much thereof as aforesaid, of the deposit of copies of such draft award, or of so much thereof as aforesaid, and shall in such notices appoint a time and place, or times and places, for holding a meeting or meetings to hear objections against such draft award, (the first such meeting to be not earlier than twenty-one days after the last day of publication of the said notice,) and shall hold such meeting or meetings accordingly, and thereat hear and determine any objections which may then and there be made to such draft award by any person interested therein, or adjourn the further hearing thereof, if the arbitrator see fit, to a future meeting, and may take any measures which he may deem proper for ascertaining the value of any such lands or interests as aforesaid, or the justice or propriety of any other matter of such draft award, and may from time to time, if he see occasion, appoint and hold further meetings for hearing and determining objections to such draft award, of which further meetings, when not holden by adjournment, notice shall be given in manner hereinbefore directed; and when the arbitrator has heard and determined all such objections, and made such inquiries as he may think necessary in relation thereto, and made such alterations (if any) as he

may deem proper in the draft award, he shall make his award under his hand and seal accordingly; and every such award shall be binding and conclusive, subject to the provisions concerning traverse hereinafter contained, upon all persons whomsoever; and no such award shall be set aside for irregularity in matter of form; and every such award, and copies thereof, or of so much thereof as relates to lands in the respective counties and electoral divisions, shall be deposited as hereinbefore directed with respect to the said maps or plans, schedules and estimates, and copies thereof, or of so much thereof as aforesaid; and the company shall thereupon publish notice, as hereinbefore directed, concerning notice of the deposit of copies of such maps or plans, schedules and estimates, or of so much thereof as aforesaid, of the deposit of copies of such award, or of so much thereof as aforesaid, and requiring all persons claiming to have any right to or interest in the lands, the price or compensation to be paid in respect of which is ascertained by such award, to deliver to the company on or before a day to be named in such notice (such day not being earlier than thirty-one days from the date of the last publication of the notice) a short statement in writing of the nature of such claim, and a short abstract of the title on which the same is founded; and such statement and abstract shall be paid for by the company.

14 & 15 Vict.
c. 70.

X. Provided always, That the arbitrator may make several awards, so as to include in a separate award the lands in each electoral division, or such portion of the lands in relation to which he is arbitrator as, having reference to the deposits to be made under this act, the meetings to be holden, and the inquiries to be made in relation to such lands, and the convenience of the parties interested in the matter of the arbitration, he may think fit.

Separate awards may be made as to lands in the several parishes or otherwise.

XI. Every clerk of the peace and clerk of any union is hereby required to retain the documents to be deposited with him under this act in his custody, and to permit all persons interested to inspect the same, and to make copies and extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default, as is provided by an act of the session holden in the seventh year of King William the Fourth and the first year of Her Majesty, chapter eighty-three (a).

Clerks of the peace and clerks of unions required to take charge of documents deposited, as provided by 7 W. IV. & 1 Vict. c. 83 (a).

(a) See this act in the Appendix, *ante*.

XII. The salary or remuneration, travelling and other ex-

Expenses of the arbitrator to be borne by the company.

14 & 15 Vict.
c. 70.

penses of the arbitrator, and all costs, charges, and expenses (if any) which shall be incurred by the said Commissioners of Public Works in carrying the provisions of this act into execution, shall be paid by the company; and the amount of such costs, charges, and expenses shall from time to time be certified by the said commissioners, after first hearing any objections that may be made to the reasonableness of any such costs, charges, and expenses by or on behalf of the company; and it shall be lawful for the said commissioners from time to time to require the company to deposit in the bank of *Ireland*, to the credit of the said commissioners, any sum or sums of money, or to give such other security for the payment of any such costs, charges, and expenses as to the said commissioners shall seem fit; and every certificate of the said commissioners, certifying the amount of such costs, charges, and expenses, shall be taken as proof in all proceedings at law or in equity of the amount of such respective costs, charges, and expenses, and the amount so certified shall be a debt due from the company to the crown, and shall be recoverable accordingly.

Costs of parties.

XIII. It shall be lawful for the arbitrator, where he thinks fit, upon the request of any party by whom any claim has been made before him, to certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the company; and if within seven days after demand the amount so certified be not paid to the party entitled to receive the same, such amount shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly; but no such certificate shall be given where the arbitrator has awarded the same or a less sum than has been offered by the company in respect of such claim before the commencement of the arbitration.

Certificates of
amount of com-
pensation to be
delivered by com-
pany.

XIV. Within thirty days from the delivery of such statement and abstract as aforesaid to the company, the company shall, where it appears to them that any person so claiming is absolutely entitled to the lands, estate, or interest claimed by him, deliver to such person, on demand, a certificate under the company's seal, stating the amount of the price or compensation to which he is entitled under the said award; and where more lands than are included in one number shall be claimed by the same person, such lands, or the interest therein, may be included in one certificate, if the company think fit, such certificates to be prepared by and at the costs of the company; and where any agreement has been entered into in respect to the

value of the interest of any person in any lands, or his right to compensation, the company may, where it appears to them that such person is absolutely entitled, deliver to such person a like certificate.

14 & 15 Vict.
c. 70.

XV. The company shall, on demand, pay to the party to whom any such certificate is given, or otherwise as herein provided in the cases hereinafter mentioned, the amount of moneys specified to be payable by such certificate to the party to whom or in whose favour such certificate is given, his or her executors, administrators, or assigns; and if the company willfully make default in such payment as aforesaid, then the party named in such certificate shall be entitled to enter up judgment against the company in the Court of Queen's Bench in *Ireland* for the amount of the sums specified in such certificate, in the same manner in all respects as if he had been, by warrant of attorney from the company, authorised to enter up judgment for the amount mentioned in the certificate, with costs, as is usual in like cases; and all moneys payable under such certificates, or to be recovered by such judgments as aforesaid, shall at law and in equity be taken as personal estate as from the time of the company entering on any such lands as aforesaid.

Amount mentioned in certificates to be paid to parties, on demand, &c.

XVI. When and so soon as the company have paid to the party to whom any such certificate as aforesaid is given, or otherwise, as herein provided, in the cases hereinafter mentioned, the amount specified to be payable by such certificate to the party to whom or in whose favour the certificate is given, his executors, administrators, or assigns, it shall be lawful for the company, upon obtaining such receipt as hereinafter mentioned, from time to time to enter upon any lands in respect of which such certificate is given, and thenceforth to hold the same for the estate or interest in respect of which the amount specified in such certificate was payable.

When amount mentioned in certificates is paid to parties, company may take possession.

XVII. In every case in which any moneys are paid by any company under the provisions of this act, for such price or compensation as aforesaid, the party receiving such moneys shall give to the company a receipt for the same, and such receipt shall have the effect of a grant, release, and conveyance of all the estate and interest of such party, and of all parties claiming under or through him, in the lands in respect of which such moneys are paid, so as such receipt shall have an *ad valorem* stamp of the same amount impressed thereon in respect of the purchase-moneys mentioned in such certificate (but exclusive of the amount of compensation for damage by severance or other

Receipts duly stamped to operate as a conveyance.

14 & 15 Vict.
c. 70.

injury) as would have been necessary if such receipt had been an actual conveyance of such estate or interest, every such receipt to be prepared by and at the costs of the company.

Payment of
moneys where
parties making
claims deemed
not entitled, or
are under dis-
ability, or title
not satisfactorily
deduced.

XVIII. If it appear to the company, from any such statement and abstract as aforesaid, or otherwise, that the party making any such claim as aforesaid is not absolutely entitled to the lands, estate, or interest in respect of which his claim is made, or is under any disability, or if the title to such lands, estate, or interest be not satisfactorily deduced to the company, then and in every such case the amount to be paid by the company in respect of such lands, estate, or interest as aforesaid shall be paid and applied as provided by the clauses of "The Lands Clauses Consolidation Act, 1845," with respect to the purchase-money or compensation coming to parties having limited interests, or prevented from treating, or not making title."

Where no claim
made, or parties
refuse to accept
sum certified,
money to be paid
into the bank.

XIX. Where any person claiming any right or interest in any lands shall refuse to produce his title to the same, or where the company have taken possession of any lands under the provisions of this act in respect of the price or compensation whereof, or of any estate or interest wherein, no claim has been made within one year from the time of the company taking possession, or if any party to whom any such certificate has been given or tendered refuse to receive such certificate, or accept the amount therein specified as payable to him, then and in any such case the amount payable by the company in respect of such lands, estate, or interest, or the amount specified in such certificate, shall be paid into the Bank of *Ireland*, in the name and with the privity of the Accountant-General of the Court of Chancery in *Ireland*, in manner provided by the last-mentioned clauses of "The Lands Clauses Consolidation Act, 1845," and the amount so paid into the said bank shall be accordingly dealt with as by the said act provided; and no moneys paid into the bank under this act shall be liable to Usher's poundage.

Nothing to pre-
vent company
requiring further
evidence of title,
at their costs.

XX. Nothing herein contained shall prevent the company from requiring any further abstract or evidence of title respecting any lands included in any such award as aforesaid, in addition to the abstract or statement hereinbefore mentioned, if they think fit, so as the same be obtained at the costs of the company.

Delivery of cer-
tificate may be
enforced by Court
of Chancery.

XXI. If from any reason whatever the company shall not deliver the certificate aforesaid to any party claiming to be en-

titled to any interest in any lands the possession whereof has been taken by the company as aforesaid, then the right to have a certificate according to the provisions of this act may, at the costs and charges of the company, be enforced by any party or parties, by application to the High Court of Chancery in *Ireland* in a summary way by petition, and all other rights and interests of any party or parties arising under the provisions of this act may be in like manner enforced against the company by such application as aforesaid.

14 & 15 Vict.
c. 70.

XXII. (a) Provided always, That where the company are desirous, for the purposes of their works, of entering upon any lands before they would be entitled to enter thereon under the provisions hereinbefore contained, it shall be lawful for the company, at any time after the arbitrator shall have framed his draft award, upon depositing in the Bank of *Ireland*, as herein directed, such sum as the arbitrator may certify to be in his opinion the proper amount to be so deposited in respect of any lands authorised to be purchased or taken by the company, and mentioned in such draft award, to enter upon and use such lands for the purposes of the railway and works of the company; and the arbitrator shall, upon the request of the company, at any time after he shall have framed such draft award, certify under his hand the sum which in his opinion should be so deposited by the company in respect of any lands mentioned in such draft award before they enter upon and use the same as aforesaid, and the sum to be so certified shall be the sum or the amount of the several sums set forth in such draft award as the sum or sums to be paid by the company in respect of such lands, or such greater amount as to the arbitrator, under the circumstances of the case, may seem proper; and, notwithstanding such entry as aforesaid, all proceedings for and in relation to the completion of the award, the delivery of certificates, and other proceedings under this act, shall be had, and payments made, as if such entry and deposit had not been made; provided that the company shall, where they enter upon any lands by virtue of this present provision, pay interest at the rate of five pounds *per centum per annum* upon the purchase and compensation money payable by them in respect of any lands so entered upon, from the time of their entry until the time of the payment of such money and interest to the party entitled thereto, or where, under the provisions of this act, such purchase-money or compensation is required to be paid into the said bank, then until the same, with such interest, is paid into such bank accordingly; and where under this provision interest is payable on any purchase or compensation money the certifi-

After deposit of draft award, company may, upon deposit of such amount as arbitrator may think fit, enter upon lands.

Company to pay interest from time of entry.

14 & 15 Vict.
c. 70.

cate to be delivered by the company in respect thereof shall specify that interest is so payable, and the same shall be recoverable in like manner as the principal money mentioned in such certificate.

(a) This section is repealed by s. 2 of 23 & 24 Vict. c. 97, and other provisions are thereby enacted; see *post*.

Mode of deposit.

XXIII. (a) The money to be deposited as aforesaid in respect of any lands shall be paid into the Bank of *Ireland* in the name and with the privity of the Accountant-General of the Court of Chancery in *Ireland*, to be placed to his account there to the credit of the company, (describing the company by its proper name,) in the matter of the Railways Act, (*Ireland*), 1851, and of the lands in respect of which the same is paid, subject to the control and disposition of the said court; and upon such deposit the cashier of the said bank shall give to the company, or to the party paying in such money by their direction, a receipt for the same.

(a) Repealed by s. 3 of 23 and 24 Vict. c. 97, which substitutes other provisions; see *post*.

Deposit to remain as a security, and to be applied under the direction of the court.

XXIV. (a) The money so deposited as last aforesaid shall remain in the bank by way of security to the parties interested in the lands which shall so have been entered upon, for the payment of the money to become payable by the company in respect thereof under the award of the arbitrator; and the money so deposited may, on the application by petition of the company, be ordered to be invested in bank annuities or Government securities, and accumulated; and upon such payment as aforesaid by the company it shall be lawful for the Court of Chancery in *Ireland*, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the company, or, in default of such payment as aforesaid by the company, it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

(a) Repealed by s. 4 of 23 & 24 Vict. c. 97; see provisions substituted, *post*.

Company may deposit money by way of security while the office of the Accountant-General is closed.

XXV. If at any time the company be unable, by reason of the closing of the office of the Accountant-General of the said Court of Chancery, to obtain his authority in respect of the payment of any sum of money so authorised to be deposited in the bank by way of security as aforesaid, it shall be lawful for the company to pay into the bank, to such credit as aforesaid,

(subject nevertheless to being dealt with as herein provided,) such sum of money as the company shall by some writing signed by their secretary or solicitors for the time being, addressed to the governor and company of the bank in that behalf, request, and upon any such payment being made the cashier of the bank shall give a certificate thereof; and in every such case, within ten days after the re-opening of the said Accountant-General's office, the solicitor for the company shall there bespeak the direction for the payment of such sum into the name of the Accountant-General, and upon production of such direction at the Bank of *Ireland*, the money so previously paid in shall be placed to the credit of the said Accountant-General accordingly, and the receipt of the said payment be given to the party making the same in the usual way, for the purpose of being filed at the report office.

14 & 15 Vict.
c. 79.

XXVI. Where the party named in any certificate issued under the provisions hereinbefore contained of the amount of the price or compensation ascertained by any award under this act (or any party claiming under the party so named) shall be dissatisfied with the amount in such certificate certified to be payable, and where any party claiming any interest in moneys so paid into court as aforesaid shall be dissatisfied with the amount of the price or compensation in respect of which such moneys shall be so paid into court, and where any party interested in land adjoining any railway shall be dissatisfied with any award under this act so far as respects any works for the accommodation of such lands thereby awarded to be made and maintained by the company, or which such party may claim to have so made and maintained, it shall be lawful for such party, at the assizes for the county in which the lands are situate, or, where the lands are situate in the county of Dublin or county of the city of Dublin, in the term next following the giving of such certificate, or the payment of such money into court, or (if the claim be only in respect of accommodation works) the making of the award, or where such assizes are holden if such term begins within less than twenty-one days after the giving of such certificate, or the payment of such money, or the making of the award, then at the next subsequent assizes, or in the next subsequent term, (as the case may be,) upon giving ten days' notice in writing previously to such assizes or term respectively to the secretary of the company, of the amount or the accommodation works intended to be claimed, to have a traverse for damages entered in the crown book in respect of such claim, and thereupon such traverse shall be tried in like manner, and like proceedings shall be had, and subject to like provisions, as

Parties dissatisfied with award, may enter a traverse at assizes.

4 & 15 Vict.
c. 70.

far as the same can be applied, as in the case of traverses entered for damages under the acts for consolidating and amending the laws relating to the presentment of public moneys by grand juries in *Ireland* : Provided always, that the sum to be awarded or allowed as the costs, charges, and expenses of the trial of every such traverse for damages shall in no case exceed the sum of twenty pounds, and further that no party shall have any other remedy for the purpose of impeaching the amount of any price or compensation ascertained by any such award as aforesaid, or the sufficiency of the accommodation works awarded thereby, other than by means of such traverse as aforesaid, anything in any act to the contrary notwithstanding : Provided also, that the jury which shall try such traverse shall be sworn a true verdict to give, whether any and what damages will be sustained by the traverser, regard being had to the value of the lands of such traverser required, and to the injury to any lands of such traverser injuriously affected by the works of the company, or (as the case may be) as to what accommodation works ought to be made and maintained by the company for the accommodation of the lands of the traverser, or to the like effect respectively, as the case may be.

Verdict on
traverse to
have effect of
judgment.

XXVII. The entry of the verdict of the jury in case of each traverse in the crown book shall be a final decision, and binding upon all parties interested, and shall have the effect of a judgment at law obtained in the Court of Queen's Bench in *Ireland* against the company, and may be enforced by like remedies against the company, as in the case of a judgment at law, by all parties interested therein ; and in each case where a certificate shall have been delivered, such damages shall be taken and recovered in lieu of the moneys expressed to be payable by the certificate, and which shall, on payment of the damages, and any costs payable by the company, be delivered up to the said company, and such receipt for such damages shall be given as is hereinbefore provided in cases of payment of moneys on such certificates as aforesaid ; and where such damages shall be given in respect of any land, the amount of the price or compensation in respect of which, as ascertained by an award under this act, shall have been paid into court, then if the amount of such damages shall be less than the amount paid into court, the company shall, on a summary application by petition, be entitled to receive the difference between the amount of such damages and the amount of the sum paid into court, but if the amount of such damages shall exceed the amount of the moneys paid into court, then the differences between the amount paid in and the damages shall, at the costs of the company, be paid

into court; and the payment of such difference into court, and the payment of any costs payable by the company in respect of such traverse, shall be a good discharge to the company on any such verdict in the nature of a judgment as aforesaid. 17 & 18 Vict. c. 31.

XXVIII. The provisions of this act shall extend to the purchase by the company of lands for extraordinary purposes. Act to apply to the purchase of lands for extraordinary purposes.

XXIX. All the provisions of "The Lands Clauses Consolidation Act, 1845," shall, subject to the provisions herein contained, extend to and be taken as part of this act, except so far as the same are inconsistent therewith. Provisions of 8 & 9 Vict. c. 18, incorporated with this act.

XXX. In the construction of this act the words "the company" shall mean the company constituted by the special act. Meaning of "the company."

XXXI. This act shall extend to *Ireland* only. Act to extend to Ireland only.

XXXII. This act shall continue in force for five years next after the passing thereof, and thence to the end of the then next session of Parliament (a). Continuance of act, five years.

(a) Made perpetual by 23 & 24 Vict. c. 97, *post*.

RAILWAY & CANAL TRAFFIC ACT, 1854.

(17 & 18 VICT. c. 31.)

An Act for the better Regulation of the Traffic on Railways and Canals.*—[10th July 1854.]

WHEREAS it is expedient to make better provision for regulating the traffic on railways and canals: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

I. In the construction of this act "the Board of Trade" shall "Board of Trade:"

* This act is applicable to the cases of railways constructed by virtue of the certificate of the Board of Trade under the Railways Construction Facilities Act, 1864; to tramways in Ireland, under 23 & 24 Vict. c. 152; and to steam-packets, under 26 & 27 Vict. c. 92. See these acts, *post*.

17 & 18 Vict.
c. 31.

"Traffic :"

mean the Lords of the Committee of Her Majesty's Privy Council for Trade and Foreign Plantations :

The word "traffic" shall include not only passengers, and their luggage, and goods, animals, and other things conveyed by any railway company or canal company, or railway and canal company, but also carriages, waggons, trucks, boats, and vehicles of every description adapted for running or passing on the railway or canal of any such company :

"Railway :"

The word "railway" shall include every station of or belonging to such railway used for the purposes of public traffic : and

"Canal."

The word "canal" shall include any navigation whereon tolls are levied by authority of Parliament, and also the wharves and landing places of and belonging to such canal or navigation, and used for the purposes of public traffic :

"Company."

The expression "railway company," "canal company," or "railway and canal company," shall include any person being the owner or lessee of or any contractor working any railway or canal or navigation constructed or carried on under the powers of any act of Parliament :

Stations.

A station, terminus, or wharf shall be deemed to be near another station, terminus, or wharf when the distance between such stations, termini, or wharves shall not exceed one mile, such stations not being situate within five miles from St Paul's Church, in London.

Duty of railway companies to make arrangements for receiving and forwarding traffic, without unreasonable delay, and without partiality.

II. Every railway company, canal company, and railway and canal company, shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic (a) upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles, and no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever ; and every railway company and canal company and railway and canal company having or working railways or canals which form part of a continuous line of railway or canal or railway and canal communication, or which have the terminus, station, or wharf of the one near the terminus, station, or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways or canals by the other, without any unrea-

sonable delay, and without any such preference or advantage, or prejudice or disadvantage, as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodation may, by means of the railways and canals of the several companies, be at all times afforded to the public in that behalf.

17 & 18 Vic.
c. 31.

(a) See ss. 86 & 87 of the Railways Clauses Act, 1845, *ante*, pp. 394 & 396.

III. It shall be lawful for any company or person complaining against any such companies or company of anything done, or of any omission made in violation or contravention of this act, to apply in a summary way, by motion or summons, in *England*, to Her Majesty's Court of Common Pleas at Westminster, or in *Ireland* to any of Her Majesty's Superior Courts in Dublin, or in *Scotland* to the Court of Session in *Scotland*, as the case may be, or to any judge of any such court; and, upon the certificate to Her Majesty's Attorney-General in *England* or *Ireland*, or Her Majesty's Lord Advocate in *Scotland*, of the Board of Trade alleging any such violation or contravention of this act by any such companies or company, it shall also be lawful for the said Attorney-General or Lord Advocate to apply in like manner to any such court or judge, and in either of such cases it shall be lawful for such court or judge to hear and determine the matter of such complaint; and for that purpose, if such court or judge shall think fit, to direct and prosecute, in such mode and by such engineers, barristers, or other persons as they shall think proper, all such inquiries as may be deemed necessary to enable such court or judge to form a just judgment on the matter of such complaint; and if it be made to appear to such court or judge on such hearing, or on the report of any such person, that anything has been done or omission made, in violation or contravention of this act, by such company or companies, it shall be lawful for such court or judge to issue a writ of injunction or interdict, restraining such company or companies from further continuing such violation or contravention of this act, and enjoining obedience to the same; and in case of disobedience of any such writ of injunction or interdict it shall be lawful for such court or judge to order that a writ or writs of attachment, or any other process of such court incident or applicable to writs of injunction or interdict, shall issue against any one or more of the directors of any company, or against any owner, lessee, contractor, or other person failing to obey such writ of injunction or interdict; and such court or judge may also, if they or he shall think fit, make an order directing the payment by any one or more of such companies of such sum of money as such court

Parties complaining that reasonable facilities for forwarding traffic, &c., are withheld, may apply by motion or summons to the Superior Courts.

17 & 18 Vict.
c. 31.

or judge shall determine, not exceeding for each company the sum of two hundred pounds for every day, after a day to be named in the order, that such company or companies shall fail to obey such injunction or interdict; and such monies shall be payable as the court or judge may direct, either to the party complaining, or into court, to abide the ultimate decision of the court, or to Her Majesty, and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by decree or judgment in any Superior Court at Westminster or Dublin, in *England* or *Ireland*, and in *Scotland*, by such diligence as is competent on an extracted decree of the Court of Session; and in any such proceeding as aforesaid, such court or judge may order and determine that all or any costs thereof or thereon incurred shall and may be paid by or to the one party or the other, as such court or judge shall think fit; and it shall be lawful for any such engineer, barrister, or other person, if directed so to do by such court or judge, to receive evidence on oath relating to the matter of any such inquiry, and to administer such oath.

Judges may
make such
regulations as
may be neces-
sary for proceed-
ings under this
act.

IV. It shall be lawful for the said Court of Common Pleas at Westminster, or any three of the judges thereof, of whom the Chief Justice shall be one, and it shall be lawful for the said courts in Dublin, or any nine of the judges thereof, of whom the Lord Chancellor, the Master of the Rolls, the Lords Chief Justice of the Queen's Bench and Common Pleas, and the Lord Chief Baron of the Exchequer, shall be five, from time to time to make all such general rules and orders (a) as to the forms of proceedings and process, and all other matters and things touching the practice and otherwise in carrying this act into execution before such courts and judges, as they may think fit, in *England* or *Ireland*, and in *Scotland* it shall be lawful for the Court of Session to make such acts of sederunt for the like purpose as they shall think fit.

(a) General rules were issued in Michaelmas term, 1854, in accordance with this provision, and are as follows:—

1. Every application made under this act to the court shall be for a rule calling upon the company or companies complained of, to show cause why a writ of injunction should not issue against such company or companies, enjoining them to do, or to desist from doing, the thing required to be done, or the thing the doing of which is complained of by the company or persons making such application; and every application made under this act to a judge at chambers shall be by summons calling upon the company or companies complained of to show cause in like manner, which summons shall be granted only upon affidavit, and upon a statement made to the

judge in like manner as upon an application to the court for a rule to show cause. 17 & 18 Vict. c. 31.

2. If on the hearing of any such rule or summons the court or judge shall think fit to direct and prosecute inquiries into the matter thereof, under the third section of this act, the order for that purpose shall be in the following terms, or to the like effect; the rule or summons being enlarged until such further day as the court or judge shall think fit, in order that in the meantime such inquiries may be made and reported on:—

" In the Common Pleas.

" In the matter of the complaint of A. B. [or ' of the company '] against the company.

" It is ordered that C. D., Esq., engineer, [or as the case may be,] do forthwith make such inquiries into the matter of this complaint as may be necessary to enable the court [or ' the Honourable Mr Justice '] to determine the same, and do report thereon to the court, [or ' to the said Mr Justice '] on or before the day of next.

" Dated this day of 186 ."

3. Office copies of all the affidavits filed by either party on the hearing of such rule or summons shall, at the expense of such party, be furnished to the person appointed to make such inquiries, within three days after the making of such order as aforesaid.

4. The parties shall be entitled to be again heard by the court or judge upon the said report, but no fresh affidavits shall be allowed on such hearing, unless by leave of the court or a judge.

5. Every writ of injunction issued under this act shall be in the following form, or to the like effect:—

" Victoria, &c. To the Company, their agents and servants, and every of them, greeting: Whereas A. B. [or ' the company '] hath lately complained before us, in our Court of Common Pleas at Westminster, of a violation and contravention by you, the said company, of ' the Railway and Canal Traffic Act, 1854; that is to say, in [state the act or omission complained of:] And whereas, upon the hearing of such complaint the same hath found to be true; we do therefore strictly enjoin and command you the said Company, and your agents and servants, and every one of you, that you and every one of you do from henceforth altogether absolutely desist from [state the matter for the injunction whereon act done is complained of] [or ' that you and every one of you forthwith do '] [state the matter for the injunction where an omission is complained of] until one said court shall make order to the contrary.

" Witness, Sir William Erle, at Westminster, the day of in the year of our Lord, ."

6. If the court or judge shall think fit also to make an order, directing the payment of a sum of money by the company or companies complained of, such order shall be in the following form, or to the like effect:—

" In the Common Pleas.

" In the matter of the complaint of against the Company.

" It is ordered, that the said company do pay to the said [or ' into court, to abide the ultimate decision of the court in the matter of the said complaint, ' or ' to the use of Her Majesty,] the sum of £ for every day after the day of instant, that the said company shall fail to obey a certain writ of injunction dated this day, and issued against the said company at the instance of the said

" Dated this day of 186 ."

17 & 18 Vict.
c. 31.

7. If such money be ordered to be paid into court, to abide the ultimate decision of the court, the same shall, upon the ultimate decision of the court being made, be paid out of court either to the party complaining, or to the use of Her Majesty, or to the company by which the same was paid into court, as the court or judge shall direct.

Court or judge
may order a
rehearing.

V. Upon the application of any party aggrieved by the order made upon any such motion or summons as aforesaid, it shall be lawful for the court or judge by whom such order was made, to direct, if they think fit so to do, such motion or application or summons to be reheard before such court or judge, and upon such rehearing to rescind or vary such order.

Mode of pro-
ceeding under
this act.

VI. No proceeding shall be taken for any violation or contravention of the above enactments, except in the manner herein provided; but nothing herein contained shall take away or diminish any rights, remedies, or privileges of any person or company against any railway or canal or railway and canal company under the existing law.

Company to be
liable for ne-
glect or default
in the carriage
of goods, not-
withstanding
notice to the
contrary.

VII. Every such company as aforesaid shall be liable for the loss of or for any injury done to any horses, cattle, or other animals, or to any articles, goods, or things, in the receiving, forwarding, or delivering thereof, occasioned by the neglect or default of such company or its servants, notwithstanding any notice, condition, or declaration made and given by such company contrary thereto, or in anywise limiting such liability; every such notice, condition, or declaration being hereby declared to be null and void: Provided always, that nothing herein contained shall be construed to prevent the said companies from making such conditions with respect to the receiving, forwarding, and delivering any of the said animals, articles, goods, or things, as shall be adjudged by the court or judge before whom any question relating thereto shall be tried to be just and reasonable: Provided always, that no greater damages shall be recovered for the loss of or for any injury done to any of such animals, beyond the sums hereinafter mentioned; (that is to say,) for any horse, fifty pounds; for any neat cattle, per head, fifteen pounds; for any sheep or pigs, per head, two pounds; unless the person sending or delivering the same to such company shall, at the time of such delivery, have declared them to be respectively of higher value than as above mentioned; in which case it shall be lawful for such company to demand and receive by way of compensation for the increased risk and care thereby occasioned, a reasonable percentage upon the excess of the value so declared above the respective sums so limited as aforesaid, and which shall be paid in addition to the ordinary

Company not
to be liable be-
yond a limited
amount in cer-
tain cases, un-
less the value
declared and
extra payment
made.

rate of charge; and such percentage or increased rate of charge shall be notified in the manner prescribed in the statute 11 George IV. and 1 William IV. c. 68, [and shall be binding upon such company in the manner therein mentioned: Provided also, that the proof of the value of such animals, articles, goods, and things, and the amount of the injury done thereto, shall in all cases lie upon the person claiming compensation for such loss or injury: Provided also, that no special contract between such company and any other parties respecting the receiving, forwarding, or delivering of any animals, articles, goods, or things as aforesaid, shall be binding upon or affect any such party unless the same be signed by him or by the person delivering such animals, articles, goods, or things respectively for carriage: Provided also, that nothing herein contained shall alter or affect the rights, privileges, or liabilities of any such company under the said act of 11 George IV. and 1 William IV. c. 68, with respect to articles of the descriptions mentioned in the said act.

17 & 18 Vict.
c. 31.

Proof of value
to be on the
person claiming
compensation.

No special con-
tract to be bind-
ing unless
signed.

Saving of Car-
riers Act, 11
George IV. and
1 William IV.
c. 68.

VIII. This act may be cited for all purposes as "The Rail- Short title.
way and Canal Traffic Act, 1854."

21 & 22 VICT. c. 75.

An Act to amend the Law relating to Cheap Trains, and to re-
strain the exercise of certain powers by canal companies being
also railway companies.—[2d August 1858.]*

WHEREAS by the act passed in the session of Parliament held 7 & 8 Vict. c.
in the seventh and eighth years of the reign of her present 86 (a).
Majesty, chapter eighty-five, section six, it is enacted, amongst
other things, with respect to the cheap trains thereby required
to be provided in certain cases, that the fare or charge for each
third-class passenger by any such train shall not exceed one
penny for each mile travelled: And whereas it is expedient to
amend the said act in manner hereinafter mentioned: And
whereas it is also expedient to amend the act passed in the
ninth year of the reign of her present Majesty, chapter forty-
two, intituled, "An act to enable Canal Companies to become
Carriers of Goods upon their Canals," by restraining as herein- 8 & 9 Vict. c. 42.

* Railways constructed under the Railways Construction Facilities Act,
1864, (post,) are subject to the provisions of this act.

21 & 22 VICT.
C. 75.

after mentioned the exercise of certain powers therein contained: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

(a) See ss. 6-10 of this act, *ante*.

For fractions under one mile one penny may be charged, and for fractions exceeding half a mile, where the distance amounts to one mile or more, one half-penny may be charged.

I. When the distance travelled by any third-class passenger by any train run in compliance with the provisions relating to cheap trains contained in the said act of the seventh and eighth of Victoria, chapter eighty-five, is a portion of a mile, and does not amount to one mile, the fare for such portion of a mile may be one penny, or when such distance amounts to one mile, or two or more miles, and a portion of another mile, the fare or charge for such portion of a mile, if the same amounts to or exceeds one half mile, may be one halfpenny: Provided always, that for children of three years and upwards, but under twelve years of age, the fare or charge shall not exceed half the charge for an adult passenger.

Rates heretofore charged not exceeding those allowed by this clause not to be deemed excessive.

II. After the passing of this act, no fare heretofore charged to or received from any third-class passenger by any such train as aforesaid shall in any proceeding to be hereafter instituted be deemed to have exceeded the rate prescribed in such case by the said act of the seventh and eighth of Victoria, chapter eighty-five, if the same shall not have exceeded the rate of one farthing for each entire quarter of a mile travelled.

Canal companies, being also railway companies, not to take leases of canals unless specially authorised.

III. Notwithstanding anything contained in the said recited act of the ninth year of Her Majesty, it shall not be lawful for any canal or navigation company, being also a railway company, or entitled to work any railway constructed under the authority of any act of Parliament, hereafter to accept a lease of the whole or any part of the undertaking of any other railway and canal company or of any canal or navigation company, or of the tolls, dues, or charges upon or in respect of the whole or any part of any such undertaking, except under the powers of some act or acts heretofore passed or to be hereafter passed in which the parties to any such lease shall be specifically named and authorised to enter into the same.

Act to be in force for one year.

IV. This act shall continue in force for one year next after the passing thereof, and thence to the end of the then next session of Parliament.

RAILWAY COMPANIES ARBITRATION ACT,
1859.

(22 & 23 VICT. c. 59.)

An Act to enable Railway Companies to settle their Differences with other Companies by Arbitration.—[13th August 1859.]

FOR the better providing for the settlement by arbitration of matters in which railway companies in the United Kingdom are mutually interested, be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows, (that is to say,)

I. This act may for all purposes be cited as "Railway Companies Arbitration Act, 1859;" and the expression "railway companies" in this act extends to and includes all persons being the owners or lessees of, and all contractors working any railway upon which steam-power is used. Short title.
Railway companies."

II. Any two or more railway companies, whether already or hereafter incorporated, (in this act called "the companies,") from time to time, by writing under their respective common seals, may agree to refer and may refer to arbitration, in accordance with this act, any then existing or future differences, questions, or other matters whatsoever in which they then are or thereafter shall be mutually interested, and which they might lawfully settle or dispose of by agreement between themselves, and may delegate to the person or persons to whom the reference is made, any power to determine all or any of the terms of any contract to be made between the companies which the directors of the companies respectively might lawfully delegate to any committees of themselves respectively. Power for railway companies to refer matters to arbitration.

III. The companies jointly, but not otherwise, from time to time, by writing under their respective common seals, may add to, alter, or revoke any agreement for reference in accordance with this act theretofore entered into between the companies, or any of the terms, conditions, or stipulations thereof. Power to alter or revoke agreements for reference.

22 & 23 Vict.
c. 59.

Agreements to
be carried into
effect.

Reference to a
single arbitrator.

Reference to
two or more
arbitrators.

Appointment of
arbitrators by
companies.

Appointment of
arbitrators by
Board of Trade.

Appointment of
arbitrators by
companies to
supply vacancies.

Appointment of
arbitrators by
Board of Trade
to supply
vacancies.

IV. Every reference or agreement in accordance with this act, except so far as it is from time to time revoked or modified in accordance with this act, shall bind the companies, and may and shall be carried into full effect.

V. Where the companies agree, the reference shall be made to a single arbitrator.

VI. Except where the companies agree that the reference shall be made to a single arbitrator, the reference shall be made as follows; to wit,

Where there are two companies, the reference shall be made to two arbitrators :

Where there are three or more companies, the reference shall be made to so many arbitrators as there are companies.

VII. Where there are to be two or more arbitrators, every company shall by writing under their common seal appoint one of the arbitrators, and shall give notice in writing thereof to the other company or companies.

VIII. Where there are to be two or more arbitrators, if any of the companies fail to appoint an arbitrator within fourteen days after being thereunto requested in writing by the other company, or by the other companies or any of them, then, on the application of the companies or any of them, the Board of Trade, instead of the company so failing to appoint an arbitrator, may appoint an arbitrator; and the arbitrator so appointed shall for the purposes of this act be deemed to be appointed by the company so failing.

IX. When the reference is made to two or more arbitrators, if before the matters referred to them are determined any arbitrator dies, or becomes incapable or unfit, or for seven consecutive days fails to act as arbitrator, the company by which he was appointed shall by writing under their common seal appoint an arbitrator in his place.

X. Where the company by which an arbitrator ought to be appointed in the place of the arbitrator so deceased, incapable, unfit, or failing to act, fail to make the appointment within fourteen days after being thereunto requested in writing by the other company, or by the other companies or any of them, then, on the application of the companies or any of them, the Board of Trade may appoint an arbitrator; and the arbitrator so ap-

pointed by the Board of Trade shall for the purposes of this act be deemed to be appointed by the company so failing.

22 & 23 VICT.
c. 59.

XI. When any appointment of an arbitrator is made, the company making the appointment shall have no power to revoke the appointment, without the previous consent in writing of the other company, or every other company in writing under their common seal.

Appointment of
arbitrator not
revocable.

XII. Where two or more arbitrators are appointed, they shall, before entering on the business of the reference, appoint by writing under their hands an impartial and qualified person to be their umpire.

Appointment of
umpire by arbi-
trators.

XIII. If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators, then, on the application of the companies, or any of them, the Board of Trade may appoint an umpire; and the umpire so appointed shall for the purposes of this act be deemed to be appointed by the arbitrators.

Appointment of
umpire by Board
of Trade.

XIV. Where two or more arbitrators are appointed, if before the matters referred to them are determined their umpire dies, or becomes incapable or unfit, or for seven consecutive days fails to act as umpire, the arbitrators shall by writing under their hands appoint an impartial and qualified person to be their umpire in his place.

Appointment of
umpire by arbi-
trators to supply
vacancy.

XV. If the arbitrators fail to appoint an umpire within seven days after notice in writing to them of the decease, incapacity, unfitness, or failure to act of their umpire, then, on the application of the companies, or any of them, the Board of Trade may appoint an umpire; and the umpire so appointed shall for the purposes of this act be deemed to be appointed by the arbitrators so failing.

Appointment of
umpire by Board
of Trade to
supply vacancy.

XVI. Every arbitrator appointed in the place of a preceding arbitrator, and every umpire appointed in the place of a preceding umpire, shall respectively have the like powers and authorities as his respective predecessor.

Succeeding arbi-
trators and
umpires to have
powers of prede-
cessors.

XVII. Where there are two or more arbitrators, if they do not, within such a time as the companies agree on, or, failing such agreement, within thirty days next after the reference is made to the arbitrators, agree on their award thereon, then the

Reference to
umpire.

22 & 23 Vict.
c. 59.

matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

Power for arbitrators, &c., to call for books, &c., and administer oath.

XVIII. The arbitrator, and the arbitrators, and the umpire respectively may call for the production of any documents of evidence in the possession or power of the companies respectively, or which they respectively can produce, and which the arbitrator, or the arbitrators, or the umpire shall think necessary for determining the matters referred, and may examine the witnesses of the companies respectively on oath, and may administer the requisite oath; and in *Scotland* may grant diligence for the recovery of the documents or evidence, and for citing witnesses, and on application to the Lord Ordinary he may issue letters of supplement or other necessary writs in support of the diligence.

Procedure in the arbitration.

XIX. Except where and as the companies otherwise agree, the arbitrator, and the arbitrators, and the umpire respectively may proceed in the business of the reference in such manner as he and they respectively shall think fit.

Arbitration may proceed in absence of companies.

XX. The arbitrator, and the arbitrators, and the umpire respectively may proceed in the absence of all or any of the companies in every case in which, after giving notice in that behalf to the companies respectively, the arbitrator, or the arbitrators, or the umpire shall think fit so to proceed.

Several awards may be made.

XXI. The arbitrator, and the arbitrators, and the umpire respectively may, if he and they respectively think fit, make several awards, each on part of the matters referred, instead of one award on all the matters referred; and every such award on part of the matters shall for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that notwithstanding the other matters or any of them be not then or thereafter awarded on.

Awards made in due time to bind all parties.

XXII. The award of the arbitrator, or of the arbitrators, or of the umpire, if made in writing under his or their respective hand or hands, and ready to be delivered to the companies within such a time as the companies agree on, or, failing such agreement, within thirty days next after the matters in difference are referred to (as the case may be) the arbitrator, or the arbi-

Award—Extension of Time—Costs—Submission. cxxi

trators, or the umpire, shall be binding and conclusive on all the companies. 22 & 23 Vict.
c. 59.

XXIII. Provided always, That (except where and as the companies otherwise agree) the umpire, from time to time by writing under his hand, may extend the period within which his award is to be made; and if it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period. Power for umpire
to extend period
for making his
award.

XXIV. No award made on any arbitration in accordance with this act shall be set aside for any irregularity or informality. Awards not to be
set aside for in-
formality.

XXV. Except only so far as the companies bound by any award in accordance with this act from time to time otherwise agree, all things by every award in accordance with this act lawfully required to be done, omitted, or suffered, shall be done, omitted, or suffered accordingly. Awards to be
obeyed.

XXVI. Full effect shall be given by all the superior courts of law and equity in the United Kingdom, according to their respective jurisdiction, and by the companies respectively, and otherwise, to all agreements, references, arbitrations, and awards in accordance with this act; and the performance or observance thereof may, where the courts think fit, be compelled by distress infinite on the property of the companies respectively, or by any other process against the companies respectively or their respective property that the courts or any judge thereof shall direct, and where requisite frame for the purpose. Agreements, ar-
bitrations, and
awards to have
effect.

XXVII. Except where and as the companies otherwise agree, the costs of and attending the arbitration and the award shall be in the discretion of the arbitrator, and the arbitrators, and the umpire respectively. Costs of arbitra-
tion and award.

XXVIII. Except where and as the companies otherwise agree, and if and so far as the award does not otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the companies in equal shares, and in other respects the companies shall bear their own respective costs. Payment of
costs.

XXIX. The submission to any arbitration in accordance with this act may at any time be made a rule of any of Her Submission to
arbitration to be
made a rule of
court.

22 & 23 Vict.
c. 59.

Majesty's Superior Courts of Record at Westminster, or as the case may be, at Dublin, on the application of any party interested; and the court may remit the matter to the arbitrator, or to the arbitrators, or to the umpire, with any directions the court think fit.

23 VICT. c. 14.

An Act for granting to Her Majesty Duties on Profits arising from Property, Professions, Trades, and Offices.—[3d April 1860.]

Commissioners
for special pur-
poses to assess
railways;

V. No assessment shall be made under this act by the commissioners for general purposes in respect of the annual value or profits and gains arising from any railway, but in lieu thereof every such assessment shall be made by the commissioners for special purposes, and upon the value or profits and gains for the year ending the fifth day of April one thousand eight hundred and sixty, and the said last-mentioned commissioners shall notify the assessment to the secretary or other officer of the company upon which the same shall be made, and the amount of such assessment shall be paid, collected, and levied in like manner as any other assessment made by the said commissioners for special purposes.

and also the
persons employed
by railway com-
panies.

VI. In like manner as aforesaid the commissioners for special purposes shall assess the duties payable under schedule (E.) in respect of all offices and employments of profit held in or under any railway company, and shall notify to the secretary or other officer of such company the particulars thereof, and the said assessment shall be deemed to be and shall be an assessment upon the company, and paid, collected, and levied accordingly; and it shall be lawful for the company, or such secretary or other officer, to deduct and retain out of the fees, emoluments, or salary of each such officer or person the duty so charged in respect of his profits and gains.

RAILWAYS ACT, (IRELAND,) 1860.*

(23 & 24 VICT. c. 97).

An Act for Amending and making Perpetual the Railways Act, (Ireland,) 1851.—[13th August 1860.]

WHEREAS it is expedient that "The Railways Act, (Ireland,) 1851" (a), should be amended as hereinafter provided, and that with such amendments the said act should be made perpetual: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

(a) See this act, *ante*, p. xcvi.

I. The words "twenty-one" shall be substituted for the words "thirty-one" in the eighth section of the said act, and the word "fourteen" shall be substituted for the words "twenty-one" in the ninth section of the same act.

Periods of notices shortened.

II. The twenty-second section of the said act is hereby repealed; and in lieu thereof be it enacted, That when the company are desirous, for the purposes of their works, of entering upon any lands before they would be entitled to enter thereon under the provisions in the said act, as amended by this act, it shall be lawful for the company, at any time after the arbitrator shall have framed his draft award, upon depositing in the Bank of Ireland as herein directed such sum or sums as the arbitrator may certify to be in his opinion the proper amount to be so deposited in respect of any lands authorised to be purchased or taken by the company, and mentioned in such draft award, or of the several interests in such lands in respect of which no agreement shall have been come to between the company and the persons entitled thereto, to enter upon and use such lands for the purpose of the railway and works of the company; and the arbitrator shall, upon the request of the company, at any time after he shall have framed such draft award,

After deposit of draft award company may, upon deposit of such amount as arbitrator may think fit, enter on lands.

* Amended and extended by the Railways (Ireland) Act, 1864, (27 & 28 Vict. c. 71,) *post*.

23 & 24 Vic.
c. 97.

certify under his hand the sum or sums which in his opinion should be so deposited by the company in respect of any lands mentioned in such draft award, or of any such interests therein as aforesaid, before they enter upon or use the same as aforesaid, and the sum or sums to be so certified shall be the sum or sums set forth in such draft award as payable by the company in respect of such lands or of such interests in such lands in respect of which no agreement shall have been come to between the company and the persons entitled thereto, or such greater amounts as to the arbitrator under the circumstances of the case shall seem proper; and notwithstanding such entry as aforesaid, all proceedings for and in relation to the completion of the said award, the delivery of certificates, and other proceedings under the said act as amended by this act, and under this act, shall be had, and payments made as if such entry and deposit had not been made: Provided that the company shall, where they enter upon any lands by virtue of this present provision, pay interest at the rate of five pounds *per centum per annum* upon the purchase and compensation money payable by them in respect of any lands so entered upon from the time of their entry until the time of the payment of such purchase-money and compensation to the person entitled thereto, or where, under the provisions of the said act as amended by this act, such purchase-money or compensation is required to be paid into the said bank, then until the same with such interest is paid into such bank accordingly; and where under this provision interest is payable on any purchase or compensation money, the certificate to be delivered by the company in respect thereof shall specify that interest is so payable, and the same shall be recoverable in like manner as the principal money mentioned in such certificate.

Mode of deposit.

III. The twenty-third section of the said act is hereby repealed; and in lieu thereof be it enacted, That the sum or sums to be deposited as aforesaid in respect of any lands or any interests in any lands shall be paid into the Bank of *Ireland* in the name and with the privity of the Accountant-General of the Court of Chancery in *Ireland*, to be placed to his account there, to the credit of the company, (describing the company by its proper name,) in the matter of "The Railways Act, (Ireland,) 1851," and of the respective owners of the lands or of the interests in lands in respect of which the same is or are paid as aforesaid, subject to the control or disposition of the said court, and upon such deposit the cashier of the said bank shall give to the company, or the party paying in such money by their direction, a receipt for the same.

IV. The twenty-fourth section of the said act is hereby repealed; and in lieu thereof be it enacted, That the sum or sums of money so deposited as last aforesaid shall remain in the bank by way of security to the parties respectively in respect of whose interests in the lands which shall so have been entered upon such sum or sums shall have been deposited for the payment of the money to become payable by the company to such parties respectively, for their respective interests in such lands under the award of the arbitrator; and the money so deposited may, on application by petition of the company, be ordered to be invested in bank annuities or government securities, and accumulated; and upon such payment as aforesaid by the company it shall be lawful for the court of Chancery in *Ireland*, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the company; or in default of such payment as aforesaid by the company, it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

23 & 24 Vict.
c. 97.

Deposit to remain as a security, and to be applied under direction of the Court of Chancery.

V. If part only of the lands charged with any rentcharge or fee-farm rent be required to be taken for the purposes of the special act, the apportionment of any such rent or rentcharge may be settled by agreement between the party entitled to the same and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not settled by agreement, the same shall be settled by the arbitrator; and the owner of the rentcharge or fee-farm rent shall have all the same rights and remedies for the recovery of such apportioned part, as against the lands not required for the purposes of the special act, as previously to such apportionment he had for recovery of the entire.

Apportionment of rentcharge, &c., where part only of the land charged is required.

VI. If any lands shall be comprised in a lease for a life or lives or for a term of years unexpired, part only of which lands shall be required for the purposes of the special act, the rent payable in respect of the land comprised in such lease shall be apportioned between the lands so required and the residue of such land, and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by the arbitrator, and after such apportionment the lessee of such

Apportionment of rent of lands under lease where part only of such lands is required.

23 & 24 Vict.
c. 97.
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lands shall as to all future accruing rent be liable only to so much of the rent as shall be apportioned in respect of the lands not required for the purposes of the special act; and as to the land not so required, and as against the lessee, the lessor shall have the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease: and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special act, in the same manner as they would have done in case such part only had been included in the lease.

Costs in case of
traverse.

VII. In case upon the trial of any traverse under the provisions of the said act it shall appear that the sum awarded to the traverser by the jury shall be less than the sum awarded by the arbitrator, it shall be lawful for the judge, if he shall think fit, to adjudge that such traverser is not entitled to any costs of such traverse, or that the company is entitled to costs not exceeding the sum of ten pounds against such traverser; and such adjudication of such judge shall be entered in the crown book, and such costs so awarded shall be deducted from the purchase or compensation money payable by the company to such traverser, or shall be recovered from him by distress in like manner as is provided by the fifty-third section of "The Lands Clauses Consolidation Act, 1845," with respect to costs payable to promoters.

Acts to be as one
act, and to be
perpetual.

VIII. "The Railways Act, (Ireland,) 1851," as amended by this act, and this act, shall be read together as one act, and shall be made perpetual, and this act shall be held to be incorporated with that act in any act already or hereafter incorporating that act.

Short title.

IX. This act may be cited as "The Railways Act, (Ireland,) 1860."

TRAMWAYS (IRELAND) ACT, 1860.*

(23 & 24 VICT. c. 152.)

An Act to facilitate internal Communication in Ireland by means of Tramroads or Tramways.—[28th August 1860.]

WHEREAS it would be of great public and local advantage if powers were given to persons desirous to promote the construction of tramways in *Ireland* to make use for that purpose, under proper control, of public roads, post roads, and common highways, where the same can be done without injury to public interests, and to purchase and hold such lands contiguous to such roads and highways, or agreed to be sold by the owners, as shall be found useful and necessary for the completion of such undertakings, and to use such tramways for the conveyance of passengers, produce, minerals, merchandise, and other goods, in carriages, waggons, and trucks moved by animal power: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

I. Any persons intending to apply under this act for authority to make and maintain a tramway, which persons are hereinafter called the promoters, shall in the months of April and May (a) or either of them, immediately preceding the application, publish notice of their intention by advertisement, according to the regulations contained in schedule (A.) to this act, part i.: Provided always, that it shall not be competent to make application for a tramway or tramways under the provisions of this act to unite places between which statutory powers for making a railway or railways for directly connecting the same shall have been granted and be in force.

Notice by advertisement as in schedule (A.) part i.

(a) See s. 4 of the Tramways (Ireland) Amendment Act, 1861, (24 & 25 Vict. c. 102), *post*.

II. On or before the first day of May in the same year, the promoters shall deposit with the secretary of the grand jury of any county within which the tramway is proposed to be made—

Deposit of plan, section, &c., as in schedule (A.) part ii.

1. A copy of the advertisement published by them;

* See the Tramways (Ireland) Amendment Act, 1861, (24 & 25 Vict. c. 102,) *post*.

23 & 24 Vict.

2. A published map to a scale of not less than a quarter of an inch to a mile, with the line of the proposed tramway delineated thereon, so as to show its general course and direction ;

3. A plan, book of reference, and section, prepared according to the regulations contained in schedule (A.) to this act, part II ;

and with the county surveyor and the clerk of each union through which the tramway is proposed to be made a copy of each of the same documents.

Notice to owners
of lands as in
schedule (A.)
part iii.

III. On or before the second day of the same month of May, the promoters shall give to the owners or reputed owners, lessees or reputed lessees, and occupiers, of all lands which the promoters intend to apply for power to take, notice of their intention, according to the regulations contained in schedule (A.) to this act, part iii.

Deposit of me-
morial and esti-
mate, and lists
as in schedule
(A.) part iv.

IV. On or before the twelfth day of the same month of May, the promoters shall deposit with the secretary of the said grand jury—

1. A memorial of the promoters, signed by them or some or one of them, addressed to the Lord-Lieutenant in Council, praying for an Order in Council authorising the making of the tramway, with a draft of the proposed order scheduled to the memorial ;

2. An estimate of the expense of the undertaking, signed by the person making the same ;

3. Lists of the owners and others to whom the promoters have given such notice as is hereinbefore required, prepared according to the regulations contained in schedule (A.) to this act, part iv. ;

and with the county surveyor a duplicate of each of the same documents.

Preliminary in-
quiry by grand
jury at summer
assizes.

V. At the summer assizes (a) of the same year the said grand jury shall, on the application of the promoters, inquire whether or not the requirements contained in the foregoing enactments have been complied with, (for which purpose they shall have power to summon witnesses, and require the production of documents, and take evidence on oath or otherwise,) and shall hear any person interested in contending that such requirements have not been complied with who shall lodge with the secretary of the grand jury a memorial complaining of noncompliance in some particular specifically stated in such memorial, and shall then proceed to inquire generally into the *prima facie* merits of the

undertaking. With reference thereto the grand jury shall take into consideration the report of the county surveyor on the undertaking, (who is hereby required to make a report thereon to the grand jury, and to deliver a copy thereof to the promoters three clear days at least before the inquiry by the grand jury,) and shall hear in opposition to the application any owner, lessee, or occupier of any lands proposed to be taken for the purposes of the undertaking, or alleged to be injuriously affected thereby, and any railway or other company or person desiring to be heard in opposition on the ground of competition, or any part of whose rails, trams, stations, works, or accommodations is proposed to be taken or in any manner used or interfered with for the purposes of the undertaking, and the inhabitants of any town, place, or district alleged to be injuriously affected by the undertaking. The grand jury shall then approve provisionally or disapprove, as they may think fit, of the undertaking, with or without modification, having regard to the compliance or noncompliance of the promoters with the requirements aforesaid, and to the *primâ facie* merits of the undertaking, in engineering, financial, and other respects; and such provisional approval or such disapproval, (with, in case of disapproval, the grounds thereof,) shall be certified in writing under the hand of the secretary of the grand jury; and in all cases where the proposed undertaking is provisionally approved of by any grand jury or grand juries, it shall be lawful for any railway company or owner of land who may have opposed the application for the same to appeal against any such provisional approval to the Lord-Lieutenant in Council, who shall, as soon as may be, inquire into the grounds of such provisional approval, and allow or disallow the appeal.

23 & 24 Vict.
c. 152.

(a) The application to the grand jury may be made either at the spring or the summer assizes; and the approval by the grand jury is now sufficient under ss. 2 & 3 of the Tramways (Ireland) Amendment Act, 1861, (24 & 25 Vict. c. 102,) *post*.

VI. Where the proposed tramway does not lie wholly within one county, the foregoing enactments shall apply equally to every county within which any part of it lies, except that the promoters may, if they think fit, deposit with the secretary of the grand jury, and the surveyor of any county, and the clerk of any union, such plan, book of reference, section, estimate, and lists only as relate to so much of the proposed tramway as lies within that particular county.

Tramway not
wholly in one
county.

VII. Where the proposed tramway does not lie wholly within one county, and the undertaking is provisionally approved of

Appeal to Lord-
Lieutenant in
Council against
disapproval.

23 & 24 Vict.
c. 152.

confirmation the order shall have no effect whatever. The bill for any such act shall be introduced on or before the first of June, and treated in all respects as a public bill. The order to be confirmed by the bill shall be specified in a schedule to it, but shall not be set out at length therein. The promoters shall deposit, for the use of the members of the Houses of Parliament respectively, so many copies of the order in such offices of the Houses respectively as the clerk of the Parliaments and the Speaker of the House of Commons respectively may from time to time direct.

If desired by promoters, company to be constituted by the order.

XV. Where the promoters desire that a joint-stock company (a) shall be constituted for the execution of the undertaking, the order authorising the making of the tramway shall contain proper provisions, with apt terms, for uniting into a company for that purpose such persons as shall be named or referred to therein, being subscribers to the undertaking, and for incorporating them into a company, by an appropriate name, with perpetual succession and a common seal, and with power to purchase and hold land for the purpose of the undertaking, subject and according to the restrictions of this act and of the order.

(a) The Lord-Lieutenant in Council may sanction the execution of the works by an existing company: Tramways (Ireland) Amendment Act, 1861, 24 & 25 Vict. c. 102, s. 8, *post*.

Order to prescribe capital, &c.

XVI. Every such order shall prescribe the amount of the share capital of the company, (the same and every part thereof to be applied only in carrying into execution the objects and purposes of the order,) the number of the shares into which the capital shall be divided, the amount of each share, the amount and intervals of calls, and the maximum aggregate amount to be called within a certain time.

Order may empower company to borrow, under restrictions.

XVII. Any such order may (where it seems to the Lord-Lieutenant in Council expedient) empower the company to borrow on mortgage or bond such money as in the order shall be specified, (the same and every part thereof to be applied only in carrying into execution the objects and purposes of the order,) and may provide, in such manner as may seem fit, for the payment of interest on and the discharge of the principal money borrowed, and for the appointment of a receiver on behalf of mortgagees: Provided always, that no such order shall empower the company to borrow more money in the whole than one-third of the amount of their share capital, or to borrow any money whatever until the whole of their share capital is sub-

scribed for, and one-half of it is actually paid up, and they prove to the justice who is to certify, under the provisions contained in the fortieth section of the Companies Clauses Consolidation Act, 1845, that all such capital has been subscribed for *bonâ fide*, and is held by subscribers or their assigns, and for which such subscribers or their assigns are legally liable.

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c. 152.

XVIII. Every such order shall prescribe the time within which the first general meeting of the shareholders shall be held, and may prescribe or provide for any such thing relating to the constitution, management, rights, powers, or duties of the company as is ordinarily prescribed or provided for in a special act authorising the construction of a railway and incorporating a company for that purpose.

Order to prescribe for management, &c., of company.

XIX. Every such company, and no other, shall be deemed to be a tramway company within the meaning of this act, and (subject to the other provisions of this act) the Companies Clauses Consolidation Act, 1845, shall apply to every tramway company, and shall be incorporated with the order constituting it, and (subject as aforesaid) the Lands Clauses Consolidation Act, 1845, the Railways Clauses Consolidation Act, 1845, and the Railways Act (Ireland), 1851, shall apply to every tramway authorised by an order, (whether a tramway company is thereby constituted or not,) and shall be incorporated with every such order.

Railways Clauses Consolidation Act and others incorporated with Order in Council.

XX. In the construction of the said acts in connexion with any such order—

Construction of incorporated acts with Order in Council.

The expression, "the special act," used in the said acts, shall be taken to mean or apply to any such order as and when confirmed by act of Parliament;

The expressions, "the undertaking" and "the railway," used in the said acts, shall be respectively taken to mean or apply to the tramway and works by such order authorised;

The expression, "the company," used in the said acts, shall be taken to mean, as to the Companies Clauses Consolidation Act, 1845, a tramway company, and as to the said other acts, the persons or person or body corporate or company authorised by any such order to make a tramway; and the said acts shall be read as if the Board of Works were therein named instead of "the Board of Trade," and as if Dublin were therein named instead of London.

XXI. It shall not be lawful for the persons authorised to make a tramway under this act to begin to make the same

Plan and section of authorised

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alterations to be
deposited before
tramway is be-
gun.

without first depositing in like manner as a plan and a section are hereinbefore required to be deposited, a plan and a section (prepared in like manner as the original plan and section) of all such alterations from the original plan and section as shall be authorised by the Order in Council, and without also first furnishing a duplicate thereof to the Board of Works.

Plan and section
furnished to
Board of Works
to be sufficient
for purposes of
14 & 15 Vict. c.
70.

XXII. For the purposes of the application of the Railways Act, (Ireland,) 1851, to a tramway under this act, any map, plan, book of reference, and section furnished to the Board of Works under this act shall be sufficient, and the same shall be used and proceeded on in lieu of the maps or plans and schedules of lands, works, and names by the last-mentioned act required. Such estimates and such draft award, and copies thereof and of parts thereof, as are by the same act required, shall be deposited in like manner as plans and other documents are hereinbefore required to be deposited, and not otherwise, and the terms of notice of deposit to be published under that act shall be altered accordingly.

Some provisions
of incorporated
acts excepted.

XXIII. The provisions of the said acts directing deposits to be made with clerks of the peace (except the provisions relative to access to the special act) and with clerks of poor law unions and postmasters, and the provisions with respect to the crossing of roads and other interferences therewith, (other than the provisions of the Railways Clauses Consolidation Act, 1845,) sections LXV., LXVI., LXVII.,) and the provisions with respect to the use of locomotive engines or other moving power, not being animal power, shall be accepted out of the incorporation hereinbefore made; and it shall be lawful for the Lord-Lieutenant in Council, in and by any such order, if the circumstances of the case appear so to require, to vary or except any of the provisions of any of the said acts.

Construction and
gauge.

XXIV. Every tramway made under this act shall be worked by animal power only, and shall (unless in any case the Order in Council otherwise provides) be constructed with iron rails or trams, and on the gauge of five feet three inches. Any such tramway may be authorised to be constructed wholly or partly along or across any post-road, road now or formerly a turnpike road, public highway, street, square, market-place, court, lane, alley, bridge, or quay, or other public thoroughfare, passage, or place whatsoever, on the level.

Maximum tolls
and rates of

XXV. Any such Order in Council may prescribe the maximum tolls and rates of charge to be taken and made for

Tramway—Extension of Time—Abandonment. cxxxv

passengers, animals, and things conveyed on the tramway, not exceeding the tolls and rates of charge specified in schedule (B.) to this act, and may make regulations for the calculation and charging thereof; and in the absence in any case of any special provisions for those purposes, or so far as any such special provisions shall not extend, the maximum tolls and rates of charge, and the regulations, shall be those specified in the same schedule.

23 & 24 VICT.
c. 152.
charge, with re-
gulations in
schedule (B.)

XXVI. It shall be lawful for the Lord-Lieutenant in Council, on the like proceedings and inquiry as are hereinbefore specified being taken and made, to make an order authorising the varying, extending, or enlarging of any tramway already authorised, and the maintenance of the tramway, as and when so varied, extended, or enlarged. No such order shall have any effect until confirmed by an act of Parliament, proceedings for the obtaining of which shall be taken in manner hereinbefore provided with respect to an original order for the making of a tramway.

Tramway may be
varied, enlarged,
&c.

XXVII. It shall be lawful for the Lord-Lieutenant in Council, by order, when the circumstances of any case appear to render it expedient, to extend the time limited for the completion of a tramway, or to authorise the abandonment of all or any part of a tramway: Provided always, that it shall not be lawful for the Lord-Lieutenant in Council to make any such order without notice being given to the owners or reputed owners, lessees or reputed lessees, and occupiers of the lands in which the work or the part thereof intended to be abandoned is situate, or without notice being given to such other persons or authorities as the Lord-Lieutenant in Council may think fit, or without hearing any person or authority concerned and desiring to be heard. No such order shall have any effect until confirmed by an act of Parliament, proceedings for the obtaining of which shall be taken in manner hereinbefore provided with respect to an original order for the making of a tramway.

Time for comple-
tion may be ex-
tended, or aban-
donment may be
authorised.

XXVIII. Provided always, That any Order in Council authorising the abandonment of a tramway, or any part thereof, shall be made and take effect subject to the following restrictions and conditions:

On abandon-
ment, damage to
be made good,
and land taken
to be used for
highway pur-
poses, or to go
back to original
owner.

1. The order shall contain such provisions as may appear expedient for compelling the owners of the tramway to make good any damage that may have been caused to any post-road, turnpike road, public highway, street, square, market-place, court, lane, alley, bridge, or quay, or other

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public thoroughfare, passage, or place, by or in consequence of the making of the tramway, or of the part thereof authorised to be abandoned, (as the case may be:)

2. If, on the application for the order, it is shown to the Lord-Lieutenant in Council that all or any lands acquired by the owners of the tramway for the purposes thereof, or of the part thereof authorised to be abandoned, (as the case may be,) may with advantage be dedicated for highway purposes to the use of the public, and to that end be placed under the control of the grand jury, municipal corporation, body of commissioners, or other body having the control of the public roads in the county, city, borough, town corporate, place, or district where the lands are situate, the Order in Council shall contain such provisions in that behalf as may appear expedient:
3. In the absence of any such provisions, and so far as all or any such provisions shall not extend, the lands acquired by the owners of the tramway for the purposes thereof, or of the part thereof authorised to be abandoned, (as the case may be,) shall go to and vest in the person or persons from whom the same were acquired, his or their respective heirs, successors, executors, administrators, or assigns, (according to the tenure of the lands,) discharged from all estates, interests, and claims of the owners of the tramway, or any person claiming under them, and as if any order authorising the making of the tramway had never been made or confirmed, or as near thereto as circumstances will admit.

Deposit as security for completion by a company.

XXIX. Where the promoters are not an existing tramway company, and a tramway company is constituted by the Order in Council authorising the undertaking, and also where the promoters are an existing tramway company, but are not possessed of a tramway actually open for traffic, then and in every such case the promoters shall give security for the completion of the proposed tramway as follows:

1. Within forty-eight hours after the making of the order they shall, with the privy of the Accountant-General of the Court of Chancery, either pay in his name into the Bank of *Ireland* a sum of money equal to one-twentieth part of the estimated cost of the undertaking, or deposit in his name in the Bank of *Ireland*, or transfer into his name there, exchequer bills or other government securities equivalent to that sum at the price at which such bills or securities were originally purchased by the promoters, (to be proved by the broker's certificate of such purchase:)

2. Before making any such payment, deposit, or transfer, they shall obtain from the clerk of Her Majesty's Privy Council in *Ireland* a warrant under his hand authorising the same, and stating the title of the account to which such money, bills, or securities, shall be placed, which warrant shall be sufficient authority to the said Accountant-General for permitting such payment, deposit, or transfer: Provided always, that in case of the Accountant-General's office being closed at the time when any such payment, deposit, or transfer is required, the same may be made and shall be received and acted on by the Bank of *Ireland* without his actual privy:
3. The Court of Chancery, on the petition in a summary way of the persons or person making such payment, deposit, or transfer, or the majority of such persons, or the survivors or survivor of them, hereinafter called the depositors or depositor, may order that any money so paid, or any interest or dividend accrued on any bills or securities so deposited or transferred, be invested in any such securities as the depositors or depositor may desire and the court approve:
4. In the following cases, and not otherwise, the Court of Chancery on the petition in a summary way of the depositors or depositor, shall order the money, bills, or securities, so paid, deposited, or transferred, and any securities in which any investment may be made as aforesaid, and any interest or dividend accrued thereon respectively, to be paid or transferred to or into the names or name of the depositors or depositor; namely,
- (1.) If an act of Parliament confirming the Order in Council with respect to which such payment, deposit, or transfer is made, does not pass in the session current at the date of the order, or, if Parliament be not then sitting, then in the session beginning next after that date:
- (2.) If such an act does so pass, and within the time limited for the completion of the tramway the company open it for traffic, or prove to the Board of Works that they have paid up one-half of their share capital, and have expended for the purposes of the order a sum equal to such half, or else execute a bond in twice the amount paid into the bank, or represented by the deposit or transfer aforesaid, conditioned for payment to Her Majesty, her heirs or successors, of that amount, in the event of their failing either to open the tramway for traffic, or to give such proof as aforesaid, within the

23 & 24 Vict.
c. 152.

time limited for the completion of the tramway, (such bond to be prepared to the satisfaction of and deposited with the Board of Works, and to be made with a surety or sureties approved of by the Board of Works :)

5. If an act confirming the order passes as aforesaid, and the time limited for completion of the tramway expires before it is opened for traffic, or before such proof as aforesaid is given, then the money, bills, or securities paid, deposited, or transferred, and any securities in which any investment may have been made as aforesaid, and any interest or dividend accrued thereon respectively, or the moneys secured by any bond given as aforesaid, (as the case may be,) shall, immediately on the expiration of the time so limited, be forfeited to Her Majesty, and be paid or transferred, by the officer or person in whose name the same shall then be standing, or by whom the same may be recovered and received, to the account of Her Majesty's Exchequer, and shall then be carried to and form part of the Consolidated Fund of the United Kingdom :
6. The certificate of the Board of Works that a confirming act of Parliament has or has not passed as aforesaid, or that the tramway has or has not been opened for traffic, or that such proof or such bond as aforesaid has or has not been given, shall be conclusive evidence thereof.

Deposit, where
time extended.

XXX. Where an Order in Council authorises an existing tramway company, being possessed of a tramway actually open for traffic, to make another tramway, or extends the time limited for the completion by a tramway company of their tramway, then and in every such case the order shall provide that after the expiration of a time thereby limited, (not exceeding in the former case five and in the latter case three years from the passing of the confirming act,) the payment of dividend on the company's ordinary capital shall be suspended until the tramway to which the order relates is opened for traffic.

In other cases
other security
for completion
to be taken.

XXXI. Where the provisions of either of the two last preceding sections are not applicable, the Lord Lieutenant in Council shall make such other provision as may seem fit for securing the completion of the tramway within the time limited.

Expenses to be
paid by pro-
motors.

XXXII. All costs, charges, and expenses necessarily incurred in connexion with the making of any such Order in Council, or any proceeding preliminary thereto, shall be paid by the promoters, and all other costs, charges, and expenses shall be in the discretion of the Lord-Lieutenant in Council.

XXXIII. For the purposes of any application made or intended to be made under this act, it shall be lawful for the county surveyor, his assistants, servants, and workmen, and also for the promoters, their engineers, surveyors, agents, servants, and workmen, at all reasonable times, and causing as little inconvenience as may be, to enter on any lands in or near the line of the proposed tramway, (not being lands which cannot be authorised to be taken under this act for the purposes of a tramway, without the consent in writing of the owner thereof,) and to survey or otherwise examine the same, and to dig or bore therein; provided that he or they first obtain authority so to do in writing under the hand of a justice of the peace at Petty Sessions in and for the district where the lands are situate, such justice not having any pecuniary interest in the undertaking. The promoters shall also make full compensation for any damage caused under this provision, the amount of such compensation to be fixed by two or more justices of the peace at Petty Sessions in and for the same district, (whose order shall be conclusive,) and to be recovered as any compensation money for lands taken by the promoters is recoverable.

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Power to promoters and county surveyor to enter and survey.

XXXIV. No deposit required by this act shall be of any effect if made on a Sunday; and any deposit made after eight o'clock in the evening of any week day but Saturday shall be deemed to be made on the following day, and if made after that hour on a Saturday shall be deemed to be made on the following Monday.

Rules as to deposits.

XXXV. The secretary of a grand jury and clerk of union shall make a memorandum in writing on every document deposited with him under this act, showing the time of deposit, and shall permit any person to inspect and examine the same at all reasonable hours and during a reasonable time, and to make copies of or extracts from it.

Secretary of grand jury, &c., to permit inspection, &c.

XXXVI. Everything required to be done under this act by the grand jury of a county shall be deemed to be a part of their fiscal business; and all enactments for the time being in force respecting the fiscal concerns of a county, or the fiscal business to be transacted by a grand jury, before or at any assizes, shall apply to everything done by a grand jury under this act, so far as the same enactments shall be applicable thereto.

Proceedings of grand jury to be part of fiscal business.

XXXVII. With respect to the county of Dublin and the county of the city of Dublin, for the purposes of this act, two

Counties of Dublin and of city of Dublin.

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c. 152.

successive presenting terms for those counties respectively shall be in the place of the summer and spring assizes for other counties, and the times at which notices shall be given, deposits made, and other proceedings taken shall be from time to time regulated by general rules made in manner hereinafter provided.

Tramway in city
or town.

XXXVIII. Where a proposed tramway lies wholly or partly in a city, borough, or town corporate, or other place or district in which the public roads are not under the control of the grand jury of the county within which such city, borough, town corporate, place, or district is locally situate, then and in every such case, for the purposes of this act, the grand jury of the county of the city or county of the town, municipal corporation, town or other commissioners having the control of the public roads in such city, borough, town corporate, place, or district, or other body having such control, or in case all such public roads are not under the control of any one such body, then each such body as to the public roads under its control shall be in the place of the grand jury of the county, with all the like rights, powers, and duties; and the secretary, town-clerk, clerk, or other like officer of any such body shall be in the place of the secretary of the grand jury of a county, with all the like rights, powers, and duties; and (except as to the county of the city of Dublin which is hereinbefore provided for) meetings of each such body shall be held for the purposes of this act at times as nearly as may be corresponding with the respective times of the summer and spring assizes for the county within which such city, borough, town corporate, place, or district is locally situate:

Provided always, that the power of any such body (including the municipal corporation of the city of Dublin) to approve or disapprove of any undertaking shall be subject to the following restrictions:

1. Such approval or disapproval shall have no effect unless it is determined on by a majority of not less than two-thirds of such members of the body as shall be present at a meeting of the body specially summoned by notice in writing, specifying the time and place and object of the meeting, delivered at the usual or last-known place of abode of each member of the body seven clear days at least before the day of the meeting:
2. Any five members of the body dissenting from the approval of any undertaking may, within one month after such approval appeal against the same to the Lord-Lieutenant in Council, and on any such appeal being brought such notice shall be given by advertisement or otherwise,

and such persons shall be heard in support of and in opposition to the appeal, as shall be from time to time directed by general rules made in manner hereinafter provided:

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Provided also, that where in any such city, borough, town corporate, place, or district, the public roads, or any of them, shall, by virtue of any special agreement or by usage or otherwise, be in fact under the control of a body not being the body in law having or entitled to have such control, then and in every such case, for the purposes of this act, the body in fact having such control shall be deemed to be the body to which the present provision applies.

XXXIX. Where any tramway shall be made through any city or town, it shall not be lawful to alter the level of any street therein without the consent of two-thirds of the owners of the houses adjoining the same, or in such manner as to prevent convenient access to all the houses adjoining such street, and in no case shall the level be altered more than four feet; and when any street shall be so raised or sunk, the whole of the surface of the roadway of such street shall be brought by the promoters to the same level, unless it shall appear to the Board of Works that such alteration is objectionable.

As to altering
level of streets
when tramways
pass through
towns.

XL. If any member of a grand jury, municipal corporation, or body of commissioners, or other body having the control of the public roads in any county, city, borough, town corporate, place, or district, shall be also the promoter or owner or one of the promoters or owners, or a member or shareholder of a tramway company being the owners, of a tramway lying wholly or in part within such county, city, borough, town corporate, place, or district, it shall not be lawful for him to vote on or otherwise act in relation to any question directly or indirectly concerning such tramway or tramway company; but no member or shareholder of a tramway company shall be disqualified from being a member of any such municipal corporation, body of commissioners, or other body as aforesaid, by reason of any contract entered into between the tramway company and such municipal corporation, body of commissioners, or other body: Provided always that nothing hereinbefore contained shall be deemed to render invalid any resolution or act of a grand jury, municipal corporation, body of commissioners, or other body as aforesaid, on or in relation to which any person shall be found to have voted or acted contrary to this enactment.

Persons inter-
ested in tram-
ways not to vote,
but not to be dis-
qualified.

XLI. Where any part of a tramway is proposed to be made

Promoters of
tramways on

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tidal lands to
deposit map at
the Admiralty.

on tidal lands within the flow of ordinary spring tides, the promoters shall, on or before the first day of May in the year in which their application is begun, deposit with the secretary of the Lord High Admiral of the United Kingdom, or the commissioners for executing the office of Lord High Admiral, a copy of so much of the plan and section aforesaid as relates to such tidal lands. The Board of Works, in the course of their public inquiry, shall inquire whether or not the last-mentioned requirement has been complied with, and shall take into consideration any communication that the Lord High Admiral or commissioners may think fit to make to the Board of Works respecting such tidal lands, and shall in their report respecting the undertaking refer to such communication, and state any recommendation that they may think fit to make in consequence thereof. The Preliminary Inquiries Act, 1851, shall apply, *mutatis mutandis*, in respect of any application for an Order in Council under this act, as if the same were an application to Parliament for such a bill as is in that act mentioned.

Lands not to be
taken without
owner's consent,
except lands ad-
joining to public
roads.

XLII. Nothing in this act, or in any order under it, shall be deemed to authorise any lands to be taken for the purposes of the undertaking without the consent in writing of the owner thereof, except such lands as may be not more than thirty feet distant at any point on a line drawn horizontally from the centre of some post-road, turnpike-road, public highway, bridge, or quay.

Demesnes, &c.,
not to be taken
without owner's
consent.

XLIII. Nothing in this act, or in any order under it, shall be deemed to authorise to be taken for the purposes of the undertaking any mansion-house, or house wholly built of stone or brick, with lime, or any of the outbuildings or offices thereof, or any part of any yard, haggard, garden, orchard, or plantation attached or belonging thereto, or any part of any deer park or other park or demesne, or planted or ornamental walk, drive, approach, or avenue, or of any ground ornamentally planted, or of any lawn or bleach-green, without the consent in writing of the owner thereof respectively, although the same may lie within such limited distance as in the last preceding section is mentioned.

Owners of sew-
ers, &c., not to
be impeded from
access.

XLIV. Nothing in this act, or in any order under it, shall be deemed to empower the owners or promoters of a tramway to impede, at any time, the owners of any sewer, drain, main, or pipe from having access to the same for the purpose of cleansing, repairing, removing, adding to, or amending it, or to give the owners or promoters of a tramway any claim for compensation

or damages for or by reason of any unavoidable injury to or for any temporary stoppage of the tramway that may be necessary for or in the execution of any such cleansing, repair, removal, addition, or amendment.

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XLV. It shall be lawful for the Lord-Lieutenant in Council, by order, to make from time to time such general rules as may seem fit for the effectual execution of this act, and the regulation of the procedure on appeals, and on inquiries by the Board of Works, and generally of all proceedings under this act, and also for fixing the amount of any fees, and the allowance, taxation, and payment of any costs, charges, and expenses to be taken, allowed, and paid under this act, and for the remuneration of any county surveyor, engineer, surveyor, or other person employed in the execution of this act under the direction or authority of a grand jury or of the Board of Works or otherwise, and from time to time to revoke or amend any such rules; but no such rules shall have any effect until the expiration of one month after the same shall have been published in the *Dublin Gazette*, and laid before both Houses of Parliament.

Lord-Lieutenant
in Council may
make general
rules for execu-
tion of this act.

XLVI. The acts specified in schedule (C.) to this act shall, as far as circumstances will admit, and as far as those acts are not inconsistent with this act, apply to tramways under this act. For the purposes of those acts, a tramway under this act shall be deemed to be a railway, (although the moving power is animal only,) and the word "company" in any of those acts shall be deemed to mean the owners of a tramway under this act, (whether a company or not,) and the Board of Works shall be deemed to be in the place of the Lords of the Committee of Her Majesty's Privy Council appointed for Trade and Foreign Plantations, and with respect to the constabulary, the Inspector-General of Constabulary shall be deemed to be in the place of the Secretary-at-War, in any of those acts mentioned: Provided always, that with respect to tramways under this act, such rates of speed as the Board of Works may from time to time direct shall be deemed to be substituted in sections VI. and XI. of the act fourthly in the same schedule specified for the rates therein respectively mentioned or referred to.

General Railway
Acts in schedule
(C.) to apply to
tramways.

XLVII. Nothing in this act, or in any order under it, shall be deemed to exempt any tramway from the provisions of any future general act relating to tramways or tramway companies, or their accounts, or from any future revision or alteration, under authority of Parliament, of the maximum tolls or rates of charge authorised by this act, or any order under it.

Tramways not
exempted from
future general
acts.

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Order in Council
may apply
amended stand-
ing orders.

XLVIII. Provided always, That if at any time it shall appear to the Lord-Lieutenant in Council to be expedient that any provision that may be hereafter adopted in the standing orders of either House of Parliament relative to private bills should be applied to tramways or proceedings under this act, it shall be lawful for the Lord-Lieutenant in Council, by order, to apply such provision accordingly in such manner as may seem fit, notwithstanding that the same may be inconsistent with any of the regulations contained in the schedules to this act, and from time to time to revoke or amend any such order; but no such order shall have any effect until the expiration of one month after the same shall have been published in the *Dublin Gazette*, and laid before both Houses of Parliament.

Interpretation of
terms.

XLIX. In this act—

The expression, "the Lord-Lieutenant in Council," means the Lord-Lieutenant or other chief governor or governors of *Ireland* for the time being, by and with the advice of Her Majesty's Privy Council in *Ireland*;

The word "county" includes any riding or division of a county for which riding or division separate assizes are held, but not a county of a city or county of a town;

The word "lands" includes lands, houses, buildings, and hereditaments of any tenure;

The word "owner," used with reference to lands, means any person who, under the provisions of any Order in Council made under this act, is enabled to sell and convey lands to the owners of a tramway;

And the words "persons" and "person" shall (unless there be something repugnant in the subject or context) be construed to include a body corporate or a company.

Extent of act.
Short title.

L. This act shall extend to *Ireland* only, and may be cited as "The Tramways (Ireland) Act, 1860."

SCHEDULES.

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SCHEDULE (A.)

PART I.

Notices by Advertisement.

1. Every advertisement shall state—
 - (1.) The objects of the intended application :
 - (2.) The description of the termini, with the names of the parishes, townlands, townships, and extra-parochial places from, through, or into which the tramway is intended to be made :
 - (3.) The times and places at which the deposit required by section II. of this act will be made :
 - (4.) The intention of the promoters (if they intend) to apply for powers for the compulsory purchase of lands.
2. The whole notice shall be included in one advertisement, which shall be headed with a short title descriptive of the undertaking.
3. The advertisement shall be inserted in three successive weeks in some one and the same newspaper of the county in which the lands to which the application relates are situate, or if there be none, then in a newspaper of some adjoining or neighbouring county. Where the application relates to lands situate in more than one county, the advertisement shall be inserted once in each of three successive weeks in a newspaper published at least twice a week in Dublin, and in a newspaper of the county in which is the principal office of the promoters, and in a newspaper of every county in which any new work is proposed to be executed, or in which any lands are situate in respect of which any new or further powers for the completion of works already authorised are intended to be applied for.
4. The advertisement shall in all cases be also inserted once in the *Dublin Gazette*.

PART II.

Form in which plans, books of reference, sections and cross sections, shall be prepared.

Plan.

1. Every plan required to be deposited shall be drawn to a scale of not less than four inches to a mile, and shall describe the line or situation of the whole of the work, (no alternative line or work being in any case permitted,) and the lands in or through which it is to be made, maintained, varied, extended, or enlarged, or through which every communication to or from the work shall be made ; and where it is the intention of the parties to apply for powers to make any lateral deviation from the line of the proposed work, the limits of such deviation shall be defined upon the plan, and all lands included within such limits shall be marked thereon : and unless the whole of such plan shall be upon a scale of not less than a quarter of an inch to every one hundred feet, an enlarged plan shall be

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added of any building, yard, courtyard, or land within the curtilage of any building, or of any ground cultivated as a garden either in the line of the proposed work or included within the limits of the said deviation, upon a scale of not less than a quarter of an inch to every one hundred feet.

2. The plan shall exhibit thereon the distances in miles and furlongs from one of the termini: and a memorandum of the radius of every curve not exceeding one mile in length, shall be noted on the plan in furlongs and chains; and where tunnelling, as a substitute for open cutting, is intended, such tunnelling shall be marked by a dotted line on the plan.

3. If it be intended to divert, widen, or narrow any turnpike road, public carriage road, navigable river, canal, tramway, or railway, the course of such diversion, and the extent of such widening or narrowing, shall be marked on the plan.

Book of Reference.

4. The book of reference to every such plan shall contain the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of all lands in the line of the proposed work, or within the limits of deviation as defined upon the plan, and shall describe such lands.

Section.

5. The section shall be drawn to the same horizontal scale as the plan, and to a vertical scale of not less than one inch to one hundred feet, and shall show the surface of the ground marked on the plan, the intended level of the proposed work, the height of every embankment, and the depth of every cutting, and a datum horizontal line, which shall be the same throughout the whole length of the work, or any branch thereof respectively, and shall be referred to some fixed point (stated in writing as the section) near either of the termini.

6. The line of the tramway marked on the section shall correspond with the upper surface of the trams.

7. Distances on the datum line shall be marked in miles and furlongs to correspond with those on the plan: a vertical measure from the datum line to the line of the tramway shall be marked in feet and inches, or decimal parts of a foot, at each change of the gradient or inclination: and the proportion or rate of inclination between each such change shall also be marked.

8. Wherever the line of the tramway is intended to cross any turnpike road, public carriage road, navigable river, canal, tramway, or railway, the height of the tramway over or depth under the surface thereof, and the height and span of every arch of all bridges and viaducts by which the tramway will be carried over the same, shall be marked in figures at every crossing thereof; and where the tramway will be carried across any such turnpike road, public carriage road, tramway, or railway on the level thereof, such crossing shall be so described on the section, and it shall also be stated if such level will be unaltered.

9. If any alteration be intended in the water level of any canal, or in the level or rate of inclination of any turnpike road, public carriage road, tramway, or railway, which will be crossed by the line of tramway, then the same shall be stated on the section, and each alteration shall be numbered; and cross sections, in reference to the said numbers, on a horizontal scale of not less than one inch to every three hundred and thirty feet, and on a vertical scale of not less than one inch to every forty feet, shall be added, which shall show the present surface of such canal, road, tramway, or railway, and the intended surface thereof when altered; and the greatest of

the present and intended rates of inclination of such road, tramway, or railway shall also be marked in figures thereon; and where any public carriage road is crossed on the level, a cross section of such road shall also be added, and all such cross sections shall extend for two hundred yards on each side of the centre line of the tramway.

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10. Wherever the extreme height of any embankment or the extreme depth of any cutting shall exceed five feet, the extreme height over or depth under the surface of the ground shall be marked in figures upon the section; and if any bridge or viaduct of more than three arches shall intervene in any embankment, or if any tunnel shall intervene in any cutting, the extreme height or depth shall be marked in figures on each of the parts into which such embankment or cutting shall be divided by such bridge, viaduct, or tunnel.

11. Where tunnelling, as a substitute for open cutting, or a viaduct as a substitute for solid embankment, is intended, the same shall be marked on the section.

12. Every plan and section shall be signed by the engineer of the promoters.

PART III.

Notices to Owners, Lessees, and Occupiers of Lands.

1. The notice required to be given by section III. of this act shall be given in respect of all lands intended to be taken, or which may be taken, as being within the limits of deviation defined upon the plan, and shall be as nearly as may be in the form set forth in the Appendix marked (A.)

2. Such notice shall be given by being delivered personally to every person to whom the same is to be given, or by being left at his usual or last-known place of abode, or, in his absence from the United Kingdom, with his agent, on or before the first day of May, or by being forwarded by post in a registered letter, addressed with a sufficient direction to his usual place of abode, and posted on or before the twenty-eighth day of April at the chief post-office in Dublin, Belfast, Cork, or Athlone, at such hours and according to such regulations as Her Majesty's Postmaster-General shall from time to time appoint for the posting and registration of such letters.

3. In all cases the written acknowledgment of the person applied to shall, in the absence of other proof, be sufficient evidence of a notice having been given, and in case of a notice having been forwarded by post in a registered letter, the production of the post-office receipt for such letter, duly stamped, in such form as the Postmaster-General shall appoint, shall be sufficient evidence of the due delivery of such letter; provided it appear that the same was properly and sufficiently directed, and was not returned by the post-office as undelivered.

4. Except in the case of delivery of letters by post, a notice served on a Sunday shall be of no effect, and a notice served after eight o'clock in the evening of any week-day but Saturday shall be deemed to be served on the following day, and if served after that hour on a Saturday shall be deemed to be served on the following Monday.

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APPENDIX (A.) TO PART III.

[Form referred to in Regulation I.]

No. _____

SIR,

We beg to inform you, that application is intended to be made to the Lord-Lieutenant in Council, through the [grand jury of the county of _____, or as the case may be,] at the ensuing [summer assizes, or as the case may be,] for an Order in Council, [here insert a short statement of the objects of the proposed order,] and that the property mentioned in the annexed schedule, or some part thereof, in which we understand you are interested as therein stated, will be required for the purposes of the said undertaking, according to the line thereof as at present laid out, or may be required to be taken under the usual powers of deviation to the extent of _____ yards on either side of the said line which will be applied for, and will be passed through in the manner mentioned in such schedule.

We also beg to inform you, that a plan and section of the said undertaking, with a book of reference thereto, have been or will be deposited with the [secretary of the grand jury of the said county, or as the case may be,] on or before the _____ of _____, on which plan your property is designated by the numbers set forth in the annexed schedule.

As we are required to report whether you assent to or dissent from the proposed undertaking, or whether you are neuter in respect thereto, you will oblige us by writing your answer of assent, dissent, or neutrality in the form left herewith, and returning the same to us with your signature on or before the _____ day of _____ next; and if there should be any error or mis-description in the annexed schedule, we shall feel obliged by your informing us thereof, at your earliest convenience, that we may correct the same without delay.

We are, Sir,

Your most obedient servants,

To _____

Note.—If the application be forwarded by post, the words "Parliamentary Notice" are to be printed or written on the cover.

SCHEDULE referred to in the foregoing notice, describing the property therein alluded to, and the manner in which the line of the proposed work, as delineated upon the plan and section, will affect the same.

—	Parish, Township, Townland, or Extra-parochial Place.	Number on Plan.	Description.	Owner.	Lessee.	Occupier.	Description of the section of the line deposited, showing the greatest height of embankment and depth of cutting where the property is intersected by the centre line of the proposed work.
Property in the line of the proposed work, as at present laid out, (including property any part of which is within eleven yards, or thereabouts, of the centre line of such proposed work, as delineated upon the plan.)							
—	Parish, Township, Townland, or Extra-parochial Place.	Number on Plan.	Description.	Owner.	Lessee.	Occupier.	
Property within the limits of the deviation intended to be applied for.							

Note.—Where the property is not intersected by the centre line, the description of the section is not given in the last column.

PART IV.

Lists of Owners, &c., assenting, dissenting, and neuter.

Separate lists shall be made of the names of the owners or reputed owners, lessees or reputed lessees, and occupiers, to whom notice has been given, distinguishing those who have assented, dissented, or are neuter in respect of such notice, or who have returned no answer thereto; and where no written acknowledgment has been returned to a notice sent by post, or where a notice by post has been returned as undelivered, the direction of the letter in which the notice was sent shall be inserted in the lists.

PART V.

Public Inquiry by Board of Works.

1. The Board of Works shall direct their attention especially to the following heads of inquiry, and shall require evidence from the promoters thereon, namely—

- (1.) The financial arrangements made or proposed by the promoters;
- (2.) Where the promoters propose that a company should be incorporated by Order in Council for the execution of the undertaking, the number and amount of shares actually subscribed for or agreed to be taken, and the amount of share capital and of loans proposed to be authorised;
- (3.) The sufficiency of the estimate for the works;
- (4.) The merits, in an engineering point of view, of the proposed tramway; the character of the gradients and curves; the number and extent of the tunnels, if any; the crossings or other uses of public roads on the level; and any peculiar engineering difficulties, with the modes proposed for overcoming them;
- (5.) The degree of favour or objection with which the project is regarded by the landowners and others in the neighbourhood of the proposed tramway.

2. The Board of Works shall hear in opposition to the undertaking any such owner, lessee, occupier, company, person, or inhabitants as is or are entitled to be heard under the provisions of this act before a grand jury.

3. The Board of Works may call for the production of any documents in the possession or power of the promoters, or of any company or person admitted to be heard in opposition to the undertaking, which the Board of Works may think necessary, and may examine any such person and his witnesses, and the witnesses for any such company and for the promoters, on oath or otherwise, and administer any oath or declaration necessary for that purpose.

SCHEDULE (B.)

Maximum Tolls, and Rates of Charge, with Regulations.

PASSENGERS.

1. The maximum rates of charge to be made by the owners of the tramway for the conveyance of passengers thereon, including the tolls for the use of the tramway and of carriages, and cost of moving power, and every other expense connected with such conveyance, shall be—

For every passenger conveyed in a first-class carriage, the sum of two-pence per mile:

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For every passenger conveyed in a carriage of inferior class, the sum of one penny halfpenny per mile.

2. The foregoing restrictions shall not extend to any special trains that may be required to run on the tramway, but shall apply only to the express and ordinary trains appointed from time to time by the owners for the conveyance of passengers and goods on the tramway.

3. Every passenger travelling on the tramway may take with him his ordinary luggage, not exceeding one hundred pounds in weight for first-class passengers and sixty pounds in weight for passengers of inferior class, without any charge being made for the carriage thereof.

Goods.

4. Subject to the provisions hereinafter contained respecting small parcels and single articles of great weight, the tolls to be taken by the owners of the tramway in respect of the tonnage of all articles conveyed in carriages thereon, or on any part thereof, shall be—

Class 1.

For dung, and all sorts of manure, chalk, and all undressed materials for the repair of roads or highways:

For all coals, coke, culm, ironstone, and iron ore:

For all charcoal, limestone, stones for building, pitching, and paving, bricks, tiles, slates, clay, and sand:

For all iron, lead, tin, and tin plates, (except nails, utensils, or other articles of merchandise:)

Not exceeding for the use of the tramway one penny per ton per mile:

If conveyed in carriages provided by the owners of the tramway, an additional sum per ton per mile not exceeding one-eighth of a penny:

If drawn or propelled by power provided by the owners of the tramway, a further sum per ton per mile not exceeding three-eighths of a penny.

Class 2.

For all other goods, wares, merchandise, articles, matters, or things, (except carriages, hereinafter otherwise provided for,) not exceeding for the use of the tramway twopence per ton per mile:

If conveyed in carriages provided by the owners of the tramway, a further sum per ton per mile not exceeding one halfpenny:

If drawn or propelled by power provided by the owners of the tramway, a further sum per ton per mile not exceeding one halfpenny.

Class 3.

For every carriage, of whatever description, (not being a carriage adapted and used for travelling on a tramway, and not weighing more than one ton,) not exceeding for the use of the tramway sixpence per ton per mile, and the sum of twopence per mile for every additional quarter of a ton or fractional part of a quarter of a ton above one ton which any such carriage may weigh:

If any such carriage be conveyed on a truck or platform provided by the owners of the tramway, an additional sum per mile not exceeding twopence:

If drawn or propelled by power provided by the owners of the tramway, a further sum per mile not exceeding twopence.

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ANIMALS.

5. The tolls to be taken by the owners of the tramway in respect of animals conveyed in carriages on the tramway shall be—

Class 4.

For every horse, mule, ass, or other beast of draught or burden, ox, cow, bull, or head of neat cattle, conveyed in or upon any such carriage, not exceeding for the use of the tramway threepence per mile:

If conveyed in or upon any carriage provided by the owners of the tramway, an additional sum per mile not exceeding one penny:

If such carriage be drawn or propelled by power provided by the owners of the tramway, an additional sum per mile not exceeding twopence.

Class 5.

For every calf, pig, sheep, lamb, or other small animal conveyed in or upon any such carriage, not exceeding for the use of the tramway one penny per mile:

If conveyed in any carriage provided by the owners of the tramway, an additional sum per mile not exceeding one farthing:

If such carriage be drawn or propelled by power provided by the owners of the tramway, an additional sum per mile not exceeding twopence.

6. The maximum rate of charge to be made by the owners of the tramway for the conveyance of animals, articles, matters, or things respectively included in the classes before mentioned, including the tolls for the use of the tramway, and of carriages, and cost of moving power, and every other expense connected with such conveyance, shall not exceed the amounts following:

For the matters mentioned in class 1, not exceeding one penny half penny per mile:

For the matter mentioned in class 2, not exceeding threepence per ton per mile:

For any carriage mentioned in class 3, not weighing more than one ton, not exceeding tenpence per mile, and if weighing more than one ton, not exceeding twopence per mile for every quarter of a ton or fractional part of a quarter of a ton additional:

For everything mentioned in class 4, not exceeding sixpence per mile:

For everything mentioned in class 5, not exceeding threepence farthing per mile:

Provided always, that it shall be lawful for the owners of the tramway to demand and take, in addition to the tolls and rates of charge hereinbefore authorised, a reasonable sum for the delivery and collection of goods and other services incidental to the business of a carrier where such services respectively shall be performed by the owners of the tramway otherwise than on the premises of the tramway.

7. The following provisions and regulations shall be applicable to the calculation of the tolls:

For passengers, animals, or things conveyed on the tramway for a less distance than four miles, the company may demand tolls as for four miles:

For a fraction of a mile beyond four miles or beyond any greater number of miles, the company may demand tolls on merchandise for such fraction in proportion to the number of quarters of a mile contained therein, and if there be a fraction of a quarter of a mile, such fraction shall be deemed a quarter of a mile; and in respect of passengers,

every fraction of a mile beyond an integral number of miles shall be deemed a mile :

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For a fraction of a ton the company may demand toll according to the number of quarters of a ton in the fraction, and if there be a fraction of a ton, the fraction shall be deemed a quarter of a ton :

With respect to all things, except stone and timber, the weight shall be determined according to the usual avoirdupois weight.

With respect to stone and timber, fourteen cubic feet of stone, forty cubic feet of oak, mahogany, teak, beech, or ash, and fifty cubic feet of any other timber, shall be deemed one ton-weight, and so in proportion for any smaller quantity.

8. With respect to small parcels and single articles of great weight, the owners of the tramway may lawfully demand for the carriage thereof on the whole or any part of the line the tolls following :

SMALL PARCELS.

For any parcel not exceeding seven pounds in weight, sixpence :

For any parcel exceeding seven pounds in weight but not exceeding fourteen pounds in weight, ninepence :

For any parcel exceeding fourteen pounds in weight but not exceeding twenty-eight pounds in weight, one shilling :

For any parcel exceeding twenty-eight pounds in weight but not exceeding fifty-six pounds in weight, one shilling and sixpence :

For parcels exceeding fifty-six pounds in weight but not exceeding five hundred pounds in weight, such reasonable sum as the owners of the tramway may think fit :

Provided always, that articles sent in large aggregate quantities, although made up of separate parcels, such as bags of sugar, coffee, meal, and the like, shall not be deemed small parcels, but that term shall apply only to single parcels in separate packages.

SINGLE ARTICLES OF GREAT WEIGHT.

For the carriage of any one boiler or cylinder, or any one piece of machinery, or single piece of timber or stone, or other single article, the weight of which, including the carriage, shall exceed three tons, the owners of the tramway may demand such sum as they think fit.

9. Nothing herein contained shall be held to prevent the owners of th tramway from taking any increased charge, over and above the charge hereinbefore limited, for the conveyance of goods of any description, by agreement with the owners of and persons in charge of such goods, either in respect of the conveyance of such goods, except small parcels, by passenger or other trains, or by reason of any other special service performed by the owners of the tramway in relation to such goods.

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c. 152.

SCHEDULE (C.)

General Acts relating to Railways by this Act made applicable to Tramways.

—	Session and Chapter.	Title.
1	1 & 2 Vict. c. 98,* . .	An Act to provide for the Conveyance of the Mails by Railways.
2	3 & 4 Vict. c. 97, . .	An Act for regulating Railways.
3	5 & 6 Vict. c. 55, . .	An Act for the better Regulation of Railways, and for the Conveyance of Troops.
4	7 & 8 Vict. c. 85, . .	An Act to attach certain Conditions to the Construction of future Railways authorised or to be authorised by any Act of the present or succeeding Sessions of Parliament, and for other purposes in relation to Railways.
5	17 & 18 Vict. c. 31, .	The Railway and Canal Traffic Act, 1854.

* As amended by 10 & 11 Vict. c. 85. s. 16.

TRAMWAYS (SCOTLAND) ACT, 1861.

(24 & 25 VICT. c. 99.)

An Act to provide for the Formation of Tramways on Turnpike and Statute Labour Roads in Scotland.—[1st August 1861.]

WHEREAS it would be of great public and local advantage if provision were made for the formation of tramways on turnpike and statute labour roads in *Scotland*: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

I. This act may be cited for all purposes as "The Tramways (Scotland) Act, 1861."

II. The following words in this act shall have the several meanings hereby assigned to them: 24 & 25 Vict.
c. 99.

The word "trustees" shall mean the trustees for the time being appointed and acting under any local turnpike or statute labour road act in *Scotland*: Interpretation
of terms.

The word "clerk" shall mean the clerk for the time being to such trustees:

The word "tramways" shall mean and include any tramroad or tramway, whether temporary or permanent, formed of iron, stone, or other material, and laid down level with the surface on any turnpike or statute labour road under the provisions of this act.

With respect to the formation of tramways on turnpike roads:

III. Any two trustees may, by a requisition under their hands, require the clerk to call a special meeting of the trustees for any day and hour specified in such requisition, not being earlier than twenty-one days after the date thereof, for the purpose of considering the expediency of forming tramways on the roads under their management, or any part thereof; and within three days after the receipt of such requisition the clerk shall call such special meeting, to be held at the time specified therein, and at the place where the meetings of the trustees are usually held; and notice of such meeting, and of the special purpose thereof, shall be given by advertisement inserted once in each of two successive weeks in a newspaper published in the county in which such roads are situated, or if there be no newspaper published therein, in a newspaper published in an adjoining county. Special meeting
of trustees may
be called to con-
sider the expedi-
ency of laying
down tramways.

IV. If the trustees present at such special meeting shall resolve that it is expedient to form tramways on the roads under their management, or any part thereof, they may remit to their surveyor, or to any engineer to be named by them, to prepare plans of the proposed tramways, showing the extent thereof, and the mode in which the same are to be formed, and the portions of the roads to be occupied thereby, with an estimate of the expense of such tramways; and such plans and estimate of expense shall be lodged with the clerk, for the inspection of the trustees, at least one month previous to the general or special meeting before which the same are to be laid. Trustees may re-
mit to their sur-
veyor or to an
engineer to pre-
pare plans of
tramways and
estimate of ex-
pense.

V. The plans and estimate of expense prepared by such surveyor or engineer shall be laid before any general meeting of the trustees convened under the provisions of the General Plans and esti-
mate to be laid
before general or
special meeting
of trustees.

24 & 25 Vict.
c. 99.

Turnpike Road Act for *Scotland*, first and second William the Fourth, chapter forty-three, or of any local act under which the trustees are appointed and acting, or before a special meeting of the trustees to be called in the manner provided by the said General Turnpike Road Act; and the trustees present at such general or special meeting may approve or disapprove of such plans and estimate of expense, or may direct such alterations to be made thereon as they may deem necessary, and may resolve to proceed or not to proceed with the formation of the tramways as they may think fit.

Tramways may
be laid down ac-
cording to plans.

VI. On such plans and estimate being finally approved by the trustees at any general or special meeting, as the case may be, it shall be lawful for the trustees to form and lay down the tramways in the manner described on such plans, and on the roads included therein, or on the sides of such roads.

Tramways to
form part of
roads.

VII. The tramways shall be laid down on the surface of the roads or on the sides thereof, and shall form part of the roads, and, subject to the provisions of this act, all the enactments of the said General Turnpike Road Act, and of any local act relating to the road on which the tramways are laid down, shall be applicable to the tramways, in the same manner and to the same effect as such enactments are applicable to such roads.

Expense of form-
ing and main-
taining tram-
ways, how to be
defrayed.

VIII. The expense of forming and laying down the tramways, and incidental thereto, shall be defrayed out of the tolls and revenues of the roads under the management of the trustees, or out of money to be borrowed on the credit of such tolls and revenues; and it shall be lawful for the trustees to borrow money for the purpose of defraying such expense, and to grant assignments of such tolls and revenues in security for the payment of the money so to be borrowed, in the manner provided by the said General Turnpike Road Act, any provision or restriction with respect to the power of borrowing money contained in any local act relating to such roads to the contrary notwithstanding; and the expense of maintaining, managing, and repairing the tramways shall be defrayed by the trustees out of the tolls and revenues of such roads: Provided that it shall not be lawful for the trustees to apply any part of such tolls and revenues in defraying the expense of forming the tramways, or to borrow money for that purpose on the security of such tolls and revenues, without the consent in writing of the persons entitled to two-thirds of the money borrowed and remaining due on the credit of such tolls and revenues.

IX. It shall be lawful for the trustees, with the powers and authorities and subject to the provisions and exemptions contained in the said General Turnpike Road Act, and in any local act relating to the roads on which the tramways are formed, to demand and take or cause to be demanded and taken, for and in respect of all carts, waggons, and carriages using or passing over the tramways, the same tolls as are levied for the time being under the provisions of such acts for and in respect of carts, waggons, and carriages using or passing over such roads; and the tolls levied and received on and in respect of the tramways shall be held and applied by the trustees for the same uses and purposes as the toll duties levied and received on and in respect of such roads: Provided always that any cart, waggon, or carriage using or passing over the tramways for any distance exceeding one hundred yards shall be liable to the same toll as if such cart, waggon, or carriage had passed through a toll gate on such roads; and the tolls payable for and in respect of carts, waggons, and carriages so using or passing over the tramways, and not passing through a toll gate, may be sued for and recovered in the same manner as toll duties may be sued for and recovered under the provisions of the said General Turnpike Road Act, which are hereby made applicable to the tolls payable for and in respect of the use of the tramways: Provided also that any cart, waggon, or carriage using or passing over the tramways or any part thereof, and thereafter passing through a toll gate on the road on which the tramways are formed, shall only be liable to pay a single toll, in the same manner as if such cart, waggon, or carriage had used or passed over such road.

24 & 25 Vict.
c. 99.
Tolls for use of
tramways.

X. It shall be lawful for the trustees to compound and agree, for any term not exceeding one year at any one time, with any person or company using the tramways or any part thereof exceeding one hundred yards in length, for the passing of his or their carts, waggons, or carriages over the tramways: Provided that such compositions and agreements shall be subject to all the provisions with respect to compositions for tolls contained in the fifty-third section of the said General Turnpike Road Act.

Trustees may
compound for
tolls on tram-
ways.

XI. The trustees may make such regulations for and with respect to the use of the tramways as they think fit; and such regulations shall be published by printed copies thereof being affixed on boards to be set up at each end of the tramways or at the toll gates nearest thereto; and every person who commits any breach or contravention of such regulations shall be liable

Trustees may
make regulations
for use of tram-
ways.

24 & 25 Vict.
c. 99.

to a penalty not exceeding five pounds for each offence; and such penalties may be sued for, imposed, and recovered in the manner provided by the said General Turnpike Road Act.

With respect to the formation of tramways on statute labour roads:

Tramways may
be formed on
statute labour
roads.

XII. In the event of any application being made to the trustees of any statute labour road by any person or company desiring to form tramways on such road, the trustees may at any general or special meeting convened under the provisions of the General Statute Labour Road Act for *Scotland*, eighth and ninth Victoria, chapter forty-one, or of any local act under which the trustees are appointed and acting, authorise such person or company to form the tramways; and on such authority being granted it shall be lawful for such person or company, at his or their own expense, to form and lay down the tramways to such extent, in such manner, and on such terms as shall be agreed upon and approved by the trustees or their surveyor.

Tramways to
form part of
roads.

XIII. The tramways shall be laid down on the surface of the roads or on the sides thereof, and shall form part of the roads, and may be used by all carts, waggons, and carriages passing over the roads; and, subject to the provisions of this act, all the enactments of the said General Statute Labour Road Act and of any local act relating to the roads on which the tramways are laid down shall be applicable to the tramways, in the same manner and to the same effect as such enactments are applicable to such roads; and the expense of maintaining, managing, and repairing the tramways shall be defrayed by the trustees out of the funds and revenues under their management, or by the person or company by whom the same were laid down, or jointly by the trustees and such person or company, as may be agreed upon.

Trustees may
make regulations
for use of tram-
ways.

XIV. The trustees may make such regulations for and with respect to the use of the tramways as they think fit; and before taking effect such regulations shall be published by printed copies thereof being affixed on boards to be set up at each end of the tramways; and every person who commits any breach or contravention of such regulations shall be liable to a penalty not exceeding five pounds for each offence; and such penalties may be sued for, imposed, and recovered in the manner provided by the said General Statute Labour Road Act.

XV. It shall be lawful for the person or company by whom

the tramways on any statute labour road were laid down, or his or their heirs or successors, and they are hereby required to take up and remove the same at such times as shall have been agreed on with the trustees: Provided that on the tramways being so removed the road on which the same were laid down shall, to the satisfaction of the trustees or their surveyor, be restored by such person or company, or his or their heirs or successors, at his or their own expense, to the same state and condition, as nearly as may be, in which such road was at the time of laying down the tramways.

24 & 25 VICT.
c. 99.

XVI. Nothing in this act contained shall authorise the trustees to form or lay down tramways within the municipal or parliamentary boundaries of any royal or parliamentary burgh, without the consent in writing of the magistrates and council of such burgh first had and obtained.

Tramways not to be laid down in burghs without consent of magistrates and council.

XVII. The person or company by whom the tramways on any statute labour road shall have been laid down, and their heirs and successors, shall maintain such tramways, while unre-moved, in constant good order for traffic at the sight and to the satisfaction of the surveyor; and when they shall propose to remove the same as aforesaid, the trustees shall be entitled to acquire all right therein belonging to such person or company, or their heirs and successors, on payment to them of such sum as the same may be valued at by valuers agreed on by the trustees and such person or company, or their heirs and successors, or failing such agreement, by any valuator or valuers appointed by the sheriff of the county on the application of either party.

Tramways to be kept in constant good order, and trustees may acquire right to them when proposed to be removed.

24 & 25 VICT. c. 102.

An Act to amend the Tramways (Ireland) Act, 1860.—[6th August 1861.]*

WHEREAS an act was passed in the last session of Parliament, intituled, "An Act to facilitate internal Communication by means of Tramroads or Tramways:" And whereas some of the provisions of the said act have been found to cause unnecessary expense and delay, and it is expedient to amend the same: Be

23 & 24 VICT.
c. 152.

* See this act in the Appendix, ante.

24 & 25 Vict.
c. 102.

it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

Act recited and
this act to be
read together.

I. The said recited act shall be continued and be in full force except when the same shall be altered or amended by or be inconsistent with the provisions of this act, and the recited act and this act shall be read together as one act.

One approval
by grand jury
to be sufficient.

II. It shall not be necessary for the grand jury in future to pronounce a provisional approval of the undertaking, but the grand jury in proceeding under the fifth section of the said recited act shall definitively approve or disapprove of the said undertaking at the first assizes at which the same shall be brought before them, and it shall not be necessary to obtain any further or other approval from the grand jury at any subsequent assizes.

Application at
spring or sum-
mer assizes.

III. The application to the grand jury for their approval may be made either at the spring or summer assizes.

Notices to be
given for spring
assizes.

IV. In case the application is made at the spring assizes, the advertisements required by the first section of the said act shall be published in the months of November or December, or either of them, immediately preceding, and the deposits required by the second and fourth sections of the said act shall be made on or before the first and twelfth day of December respectively, and the notices required by the third section shall be given on or before the second day of December.

Approval of
grand jury may
be traversed.

V. Any person entitled to appear on the inquiry before the grand jury may, in the case of their approval of the undertaking, traverse such approval, subject to and under the following regulations:—

Such traverse shall be entered with the clerk of the crown not later than twelve o'clock on the day following the approval of the grand jury;

It shall be on either of the following grounds:

First, That the preliminaries required by law for the application to the grand jury have not been complied with;

Second, That the construction of the undertaking according to the plan approved of by the grand jury would not be beneficial to the public;

In case of a traverse on the first ground, same shall be dis-

posed of by the judges of assize, or one of them, after hearing such evidence as may be adduced;

24 & 25 VICT.
c. 102.

In case of a traverse on the second ground, same shall be tried in all respects as issues joined in the Superior Courts of Common Law are or may be triable by law at such assizes;

The judges of assize, or one of them, may, if it shall appear fit, direct such traverse to be tried by a special jury;

In case more persons than one shall enter a traverse on the second ground, there shall be one trial of all such traverses, and the judge shall make such order as may seem fit for the conducting of such trial, and the appearance and intervention of the several traversers thereat;

Every traverse under this act shall be determined or tried at the same assizes at which it is entered, and in case the judge shall rule or the jury find in favour of such traverse, as the case may be, the approval of the grand jury shall be void and of no effect;

Every traverse on the first ground shall be confined to the specific points mentioned by the traverser in his memorial lodged with the secretary of the grand jury, and the particular points of noncompliance complained of shall be also stated in such traverse.

VI. The inquiry by the Board of Works directed by the ninth section of the said act shall take place before any application is made to the grand jury, in order that their report shall be submitted to the grand jury at the first application, and the Board of Works shall institute such inquiry upon the request of the promoters, and upon having deposited with them a reasonable sum, not in any case exceeding one hundred pounds, to cover the expenses of such inquiry.

Inquiry by Board of Works in the first instance.

VII. The inquiry to be made by the Board of Works, and the report to be made thereon, shall extend only to the merits of the undertaking in an engineering point of view, and to any modification of the same in that respect which may be advantageously made.

To be confined to engineering questions.

VIII. Instead of constituting a new company under the fifteenth section of the said act, the Lord-Lieutenant in Council may, if he shall so think fit, and if so desired by the promoters, empower any existing company incorporated by act of Parliament or Charter, or constituted by any statute regulating joint stock companies, to execute such undertaking, if it shall appear that such company have power to provide the necessary capital and

Existing company may be empowered to execute work.

24 & 25 Vict.
c. 102.

to apply the same to the purposes of such undertaking, but no such order shall be deemed or taken to authorise or sanction the employment by the said company for the purposes of such undertaking or of the application for the same of any funds which independently of such order they would not have power so to apply.

Orders in
Council valid
without con-
firmation by
Parliament.

IX. In any case in which the undertaking shall be approved of by the grand jury, and no petition of appeal shall be presented against such approval to the Lord-Lieutenant in Council by any of the parties entitled under such act to appeal, the Order in Council shall immediately take effect without any act of Parliament confirming the same, but in any case in which such petition of appeal is presented before the Order in Council is made, such order shall have no effect until confirmed by act of Parliament, even although no person shall appear to sustain such appeal, and when any order shall be made after the presentation of such appeal the fact of such appeal having been presented shall be stated in such order.

Grand jury may
give permission
for tramway to
cross a highway.

X. In any case in which persons constructing any tramway shall only seek under the provisions of the said act power to cross a highway, it shall be lawful for the grand jury, with the previous approbation of the Presentment Sessions held for the barony in which such proposed crossing is situate, to give permission for such crossing to be made, and thereupon and immediately upon such permission being given, and without any other approval, it shall be lawful for the persons constructing such tramway to lay down the same across any public road or roads for which permission shall have been so given; and it shall be lawful for the grand jury to annex to such permission any conditions or stipulations which to them shall seem fit; and in case such permission shall be used by the promoters, they shall be bound by such conditions and stipulations as if the same had been inserted in a special act of Parliament authorising such crossing, and all persons interested in same may have the same rights and remedies; and it shall be further lawful for the grand jury, if they shall so think fit, before such permission is acted on, to require persons of sufficient substance, to be approved of as they may direct, to enter into a bond to the secretary of the grand jury, county treasurer, or such other person as they may appoint, in such sum as they may name, conditioned for the observance of all such conditions and stipulations.

Short title.

XI. This act may be cited as "The Tramways (Ireland) Amendment Act, 1861."

26 & 27 VICT. c. 33.

26 & 27 VICT.
c. 33.

An Act for granting to Her Majesty certain duties of Inland Revenue, and to amend the laws relating to Inland Revenue.—
[29th June 1863.]

XIII. Whereas by the fourth section of the act passed in the fifth and sixth years of Her Majesty's reign, chapter seventy-nine, the proprietor or company of proprietors of every railway in *Great Britain*, and other persons therein named, are required to keep and render certain accounts as therein mentioned, and it is expedient to alter the period for which such accounts are directed to be made up, and the time of delivering the same: Be it enacted, That the proprietor or company of proprietors of every railway in *Great Britain* and the persons required by law to keep such accounts as aforesaid, shall deliver to the Commissioners of Inland Revenue or to the proper officer appointed for receiving the same, within twenty days after the termination of every calendar month, a true copy or true copies of the accounts of all sums of money received or charged and paid or accounted for, as in the said act is mentioned, during the whole of the calendar month last preceding; and all the provisions and regulations contained in the said act with regard to the accounts therein directed to be rendered, and all bonds and securities entered into or given or to be entered into or given with relation thereto, shall apply, continue, and be in force as well with respect to any surety as to the principal in any such bond, and to the accounts to be kept and rendered at the time and in the manner by this act directed, and the duties payable in respect thereof.

Accounts of
sums received
for the convey-
ance of passen-
gers upon rail-
ways to be made
up at the close
of each calendar
month.

XIV. The exemption from duty granted by the ninth section of the act passed in the seventh and eighth years of Her Majesty's reign, chapter eighty-five, in respect of the conveyance of passengers by cheap trains shall not extend to any railway train which shall not be a train running on at least six days of the week, or else a train running to or from a market town on a market day, and approved of by the Lords of the Committee of Privy Council for Trade and Plantations as a cheap train for the conveyance of passengers to or from market, or a train approved by the said Lords of the Committee of Privy Council as an ordinary train of the railway travelling on Sunday, and conveying third-class passengers at fares not exceeding one penny per mile.

Restriction on
exemption from
duty on railway
passengers
granted by sec-
tion 9 of 7 & 8
Vict. c. 85.

27 & 28 VICT.
c. 71.

RAILWAYS (IRELAND) ACT, 1864.

(27 & 28 VICT. c. 71.)

An Act for Amending and Extending the Railways (Ireland) Act, 1851, and the Railways (Ireland) Act, 1860.—[25th July 1864.]

WHEREAS it is expedient that the "Railways Act, (Ireland,) 1851," and the "Railways Act, (Ireland,) 1860," should be amended, and the provisions thereof extended, as hereinafter mentioned: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

The company, if dissatisfied with award, in cases exceeding £500, may traverse.

I. In all cases where the amount of money which the arbitrator appointed under the provisions of the said acts, or either of them, shall have awarded to be paid by the company to any person in respect of any estate or interest in lands shall exceed the sum of five hundred pounds, it shall be lawful for the company, if dissatisfied with such award, upon giving to such person within ten days next after the date of such award notice in writing of their intention to appeal therefrom, to have a traverse entered by the company in the crown-book in respect of such award, at the same time and in like manner in all respects as are provided by the aforesaid acts with respect to traverses taken by persons dissatisfied with any award, and the like proceedings shall be taken with respect to a traverse so taken by the company, and the verdict of the jury upon such traverse shall have the like effect as in the case of a traverse taken by a person so dissatisfied: Provided always, that in all cases where a traverse shall be so taken by the company, if the verdict of the jury shall be for a sum less than that awarded by the arbitrator, the company shall nevertheless pay to the other party to such traverse such sum not exceeding twenty pounds for the costs of such traverse as the judge before whom the same is tried shall direct; and in case the verdict of the jury shall be for a sum equal to or exceeding the award of the arbitrator, then and in that case the company shall pay to the other party the costs of the traverse, such costs to be taxed and ascertained in the same manner as costs are by law ascertained on the trial of an issue from the Court of Queen's Bench.

II. In all cases of traverse taken upon an award of the arbitrator, the company or person appellant shall be entitled to have the same tried by a special jury upon giving notice in writing to the respondent in such traverse of their or his intention that the same shall be so tried ten days previous to the assizes or term respectively, (as the case may be,) and the respondent in such traverse shall be so entitled upon giving the like notice six days before the said assizes or term: Provided that any judge of any of the superior courts sitting in chamber or at *nisi prius* may at any time order that such traverse shall be tried by a special jury upon such terms as he may think fit.

27 & 28 Vict.
c. 71.

Power to have
special jury.

III. Where notice has been given to try by special jury either party may, six days before the first day of the assizes or of the term, as the case may be, give notice to the sheriff that such action is to be tried by a special jury; and in case no such notice has been given, or the notice has not been given in sufficient time, no special jury need be summoned to attend, and such traverse shall be tried before a common jury unless otherwise ordered by the judge before whom the same shall be tried.

Notice to be
given to the
sheriff of special
jury.

IV. Either party to such traverse shall be entitled to have the premises viewed by the jury, and for that purpose it shall be sufficient to obtain an order of any such judge as aforesaid directing a view to be had, and thereupon all such proceedings shall be had as are directed by the "Common Law Procedure Amendment Act, (Ireland,) 1853," section 116, with respect to view juries.

Either party to
such traverse en-
titled to have the
premises viewed
by the jury.

V. In case either party shall be dissatisfied at the trial of such traverse with the ruling of the judge upon any matter of law, he shall be entitled to appeal from such ruling in the manner herein contained.

Either party may
appeal from
ruling of judge.

VI. The party so objecting shall deliver to the judge at the time of such trial a note in writing, stating such objection and the grounds thereof, and shall and may prepare a case, stating the facts and matters appearing in evidence so far as may be necessary, and the ruling of the judge and the objections to such ruling, and such case may be accompanied by an appendix containing copies of the material documents; and all proceedings shall be taken with respect to the settlement of such case, and within the same period, as are taken in *Ireland* with respect to bills of exceptions to the direction of a judge at *nisi prius*.

The party ob-
jecting shall de-
liver to the judge
a note in writ-
ing, stating ob-
jection, and
grounds thereof.

27 & 28 Vict.
c. 71.

Special case,
when settled and
signed by the
judge, to be filed.

VII. Such special case and the appendix thereto, when settled and signed by the said judge, shall be filed in such one of the superior courts as the said judge shall direct, and such court shall proceed to adjudicate on the same in like manner as upon a special case stated under the said Common Law Procedure Act, and the adjudication of such court shall be final.

Court may direct
an issue or other
inquiry.

VIII. It shall be lawful for such court, upon the hearing of such special case, to direct any issue to be tried, or any valuation or other inquiry to be made, or the said case to be amended in any way, or other act to be done, which such court may deem proper, in order finally to adjudicate upon and determine the rights of the parties.

Judgment upon
special case to be
equivalent to
judgment of
court.

IX. The judgment or order of the said court upon such special case shall be equivalent to a judgment of the said court in a personal action between the parties.

Costs of appeal
to be paid by
company where
appellants.

X. In all cases where the company shall take any proceedings by way of appeal as aforesaid the costs thereof shall be ordered to be paid by them; but in cases where the company shall be respondent in such appeal, the costs of such proceedings shall follow the event, and be included in ultimate judgment of the Court of Appeal.

As to compensa-
tion in respect of
lands tempo-
rarily occupied.

XI. The amount of purchase-money or other compensation payable by the company in respect of lands temporarily occupied by them during the construction of the works, in case the parties shall differ about the same, shall be determined in manner following: The person claiming such purchase-money or compensation shall deliver to the arbitrator a short statement in writing, setting forth the nature and amount of such claim, and shall also and at the same time deliver to the company a copy of the same; and the like proceedings in all respects shall be had with respect to such claim as are by the aforesaid act or by this act directed to be taken with respect to a claim for compensation for lands taken or injuriously affected by the execution of the works; and the arbitrator shall have full jurisdiction to entertain such claim, and determine the amount payable in respect thereof, although the lands so temporarily occupied may not be contained in the maps and plans deposited with him; and the said arbitrator may include the amount so ascertained by him as last aforesaid in his general award, or may make a special award in relation to the same in case it shall be necessary or convenient so to do, such special award

to be made in the like manner, and to be subject to the like provisions in all respects as such general award; and all the enactments expressly, or by reference or incorporation, contained in the said acts or in this act with respect to purchase-money or compensation ascertained by the award of the arbitrator in respect of lands permanently taken by the company shall be applicable to the purchase-money or compensation ascertained as aforesaid by the arbitrator in respect of lands so temporarily occupied as aforesaid.

27 & 28 Vict.
c. 71.

XII. In all cases where costs of conveyance shall be payable by the company such costs shall be taxed by one of the taxing masters of the Court of Chancery in *Ireland* upon the requisition of such company; and all the provisions of any act of Parliament, and all rules and regulations of the courts of law and equity in *Ireland* relating to the taxation of costs shall be deemed applicable to such costs so payable by the company in like manner in all respects as if the said company were directly chargeable therewith.

Taxation of
costs.

XIII. In the construction of the Railways Act, (Ireland,) 1851, and of the Railways Act, (Ireland,) 1860, and of this act, the expression "company" shall include any parties, whether company, undertakers, commissioners, drainage board, corporation, or private persons, empowered to execute any work or undertaking, and to take or use any lands, mills, or other hereditaments compulsorily under the provisions of any general or special act of Parliament; already or hereafter incorporating the said recited acts and this act or any of such acts.

Construction of
term "company."

XIV. When any railway company shall not take possession of or pay for any land within one fortnight from the lodgment of the final award of the arbitrator with the clerk of the peace, the said company shall, before taking possession of the same, in addition to the sum awarded by the arbitrator, pay to the occupant of any land to be taken the value of any crop existing upon or in the land at the time of taking possession of same, and which has not been included in said award, such value to be determined by any three justices of the petty sessions district in which such lands may be situated, one to be named by the railway company, one by the occupant of such land, and the third by the two justices so named.

XV. Every railway company in *Ireland* shall cause proper fences to be made and maintained for separating the land taken for the use of the railway from the adjoining lands not taken, and shall also provide and maintain proper drains or other pas-

Within five years
after the opening
of a railway, the
company may be
called upon to
make certain
accommodation

27 & 28 Vict.
c. 71.

works, and, if so,
the matter shall
be referred to an
arbitrator.

sages either over or under or by the sides of the railway to convey water from or to the lands lying near or affected by the railway, in the same manner and to the same extent as it was conveyed from or to the said lands before the making of the railway, or as near thereto as the case may be; and in case any owner or occupier of such land shall complain of the want of or insufficiency of any such fences, drains, or passages, it shall be lawful for such owner or occupier, within five years after the completion of the works of any railway and the opening of the railway for public use, to present a memorial to the Commissioners of Public Works in *Ireland*, stating the ground of his complaint, and thereupon the commissioners shall inquire into the matter of such complaint, and, if they shall so think fit, the said commissioners shall appoint an arbitrator to hear and determine the matter of the said complaint.

Arbitrator shall
have all the
powers of an
arbitrator appointed
under 14 & 15
Vict. c. 70, and
23 & 24 Vict. c.
97.

XVI. The arbitrator so appointed shall have and exercise all the powers vested in any arbitrator appointed under the "Railways (Ireland) Acts, 1851 and 1860," and shall proceed to investigate the said complaint at some convenient place to be named by the said Commissioners of Public Works, after giving ten days' notice of the time and place of meeting to the memorialists and to the railway company, and his award may be traversed in the same manner as any award made by an arbitrator appointed under the "Railways (Ireland) Acts, 1851 and 1860," and if not traversed shall be final; and the costs of the said arbitration and of the said arbitrator shall be paid in the same manner as the costs of an arbitration or arbitrator under the "Railways (Ireland) Acts, 1851 and 1860."

The company
shall obey the
award of the
arbitrator, except
in certain
cases.

XVII. The company shall make all such fences, drains, and passages as by the award of the said arbitrator they shall be directed to make; but no company shall be required to make the same in such a manner as will prevent or obstruct the working or using of the railway, nor shall they be required to make any fence, drain, or passage in respect of which the owner and occupier, or any former owner and occupier, shall have agreed to receive and shall have been paid compensation in lieu of the making of the works themselves.

This act, and 14
& 15 Vict. c. 70,
and 23 & 24 Vict.
c. 97, to be read
together.

XVIII. The Railways Act (Ireland) 1851, and the Railways Act (Ireland) 1860, and this act, shall be construed together as one act; and this act, together with the said acts, shall be held to be incorporated with those acts in any act already or hereafter incorporating those acts or any of them.

Short title.

XIX. This act may be cited as the Railways Act, (Ireland,) 1864.

27 & 28 VICT. c. 95.

27 & 28 VICT.
c. 95.

An Act to amend the Act ninth and tenth Victoria, chapter ninety-three, for compensating the Families of Persons killed by Accident.*—[29th July 1864.]

WHEREAS by an act passed in the session of Parliament holden in the ninth and tenth years of Her Majesty's reign, intituled, "An Act for compensating the Families of Persons killed by Accident," it is amongst other things provided, that every such action as therein mentioned shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused as therein mentioned, and shall be brought by and in the name of the executor or administrator of the person deceased: And whereas it may happen by reason of the inability or default of any person to obtain probate of the will or letters of administration of the personal estate and effects of the person deceased, or by reason of the unwillingness or neglect of the executor or administrator of the person deceased to bring such action as aforesaid, that the person or persons entitled to the benefit of the said act may be deprived thereof; and it is expedient to amend and extend the said act as herein-after mentioned: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

I. If and so often as it shall happen at any time or times hereafter in any of the cases intended and provided for by the said act that there shall be no executor or administrator of the person deceased, or that there being such executor or administrator no such action as in the said act mentioned shall within six calendar months after the death of such deceased person as therein mentioned have been brought by and in the name of his or her executor or administrator, then and in every such case such action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit such action would have been, if it had been brought by and in the name of such executor or administrator; and every action so to be brought shall be for the benefit of the same person or persons, and shall be subject to the same regulations and procedure as nearly as may be, as if it were brought by and in the name of such executor or administrator.

Where no action brought within six months by executor of person killed, then action may be brought by persons beneficially interested in result of action.

* See this act, (Lord Campbell's Act,) ante.

27 & 28 Vict.

c. 95

Money paid into court may be paid in one sum, without regard to its division into shares.

If not accepted, defendant entitled to verdict on the issue.

This and recited act to be read as one.

II. And whereas by the second section of the said act it is provided that the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and whose benefit such action shall be brought, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided between the before-mentioned parties in such shares as the jury shall by their verdict direct: Be it enacted and declared, That it shall be sufficient, if the defendant is advised to pay money into court, that he pay it as a compensation in one sum to all persons entitled under the said act for his wrongful act, neglect, or default, without specifying the shares into which it is to be divided by the jury; and if the said sum be not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the jury shall think the same sufficient, the defendant shall be entitled to the verdict upon that issue.

III. This act and the said act shall be read together as one act.

RAILWAY COMPANIES' POWERS ACT, 1864.

(27 & 28 VICT. C. 120.)

An Act to facilitate in certain Cases the obtaining of further Powers by Railway Companies.—[29th July 1864.]

WHEREAS it is expedient that in certain cases railway companies be enabled to obtain further powers on complying with the conditions of a general act of Parliament, without being obliged to procure in each case a special act: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Preliminary.

Short title.

I. This act may be cited as The Railway Companies' Powers Act, 1864.

Interpretation of terms.

II. In this act—

The term "railway" includes works connected with or for

the purposes of a railway, and also a railway authorised to be but not actually constructed : 27 & 28 Vict. c. 120.

The term "railway bill" means a bill pending in or intended to be introduced into either House of Parliament, having for its object or one of its objects to authorise the making of a railway :

The term "the Companies Clauses Acts" means, so far as the enactment in which that term is used relates to *England* or *Ireland*, or to a certificate to be operative in *England* or *Ireland*, The Companies Clauses Consolidation Act, 1845 ; and, so far as the same relates to *Scotland*, or to a certificate to be operative in *Scotland*, The Companies Clauses Consolidation (Scotland) Act, 1845 ; together with in each case The Companies Clauses Act, 1863 :

The term "the Board of Trade" means the Lords of the Committee for the time being of Her Majesty's Privy Council appointed for the consideration of matters relating to Trade and Foreign Plantations.

Description of Cases within this Act.

III. This act shall take effect and apply in each of the cases following ; namely, Act to apply in cases therein named.

1. Where a railway company are desirous that authority should be given to themselves and some other railway company or companies to enter into an agreement with respect to all or any of the matters following ; namely,

The maintenance and management of the railways of the companies respectively, or of any one or more of them, or of any part thereof respectively ;

The use and working (a) of the railways or railway, or of any part thereof, and the conveyance of traffic thereon ;

The fixing, collecting, and apportionment of the tolls, rates, charges, receipts, and revenues levied, taken, or arising in respect of traffic (b) ;

The joint ownership, maintenance, management, and use of a station (c) or other work ; or the separate ownership, maintenance, management, and use of several parts of a station or other work :

2. Where a railway company are desirous of obtaining an extension of the time limited for the sale by them of superfluous lands (d) :

3. Where a railway company incorporated by special act or by certificate under The Railways Construction Facilities Act, 1864 (e), are desirous of obtaining authority to raise additional capital.

27 & 28 Vict.
c. 120.

- (a) See s. 87 of the Railways Clauses Act, 1845, *ante*, 396, *et seq.*
- (b) See the notes to ss. 89, 90 of the Railways Clauses Act, 1845, *ante*.
- (c) As to the joint use of stations by different companies, see *ante*, p. 400.
- (d) See s. 127 of the Lands Clauses Act, 1845, *ante*, pp. 292, 293.
- (e) See this act, *post*.

Application for Certificate.

As to application
for certificate by
company to
Board of Trade.

IV. In any such case the company, if desirous to obtain a certificate under this act, shall proceed as follows; namely,

1. They shall apply to the Board of Trade for a certificate under this act:
2. They shall lodge at the office of the Board of Trade a draft of the certificate as proposed by them:
3. They shall publish notice of the application according to the general rules under this act (a).

(a) See the schedule to this act, part i., *post*.

Said Board to in-
quire if require-
ments have been
complied with;

V. As soon as conveniently may be after the time for completion of the required notice, the Board of Trade shall proceed to inquire whether the company have complied with the requirements of the general rules respecting notice.

and to consider
all representa-
tions and objec-
tions.

VI. The Board of Trade, before settling a draft of a certificate, shall take into consideration any representation made to them, and shall duly inquire into the merits of any objection brought before them, respecting the application.

Opposition of Railway or Canal Company to Application.

On railway or
canal company
affected giving
notice of opposi-
tion proceedings
before Board of
Trade to cease. ||

VII. If in any case any railway or canal company desire to be heard by counsel, agents, and witnesses against the application of the promoters, and (within such time as is prescribed by general rules under this act) lodge at the office of the Board of Trade a notice in writing to that effect (hereinafter referred to as a notice of opposition) in the form set forth in the schedule to this act, (with such variations as circumstances require,) in that case the Board of Trade, if the railway or canal company lodging the notice would be affected in any way by the proposed certificate, shall not proceed on the application of the promoters.

Further proceed-
ings to be in Par-
liament.

VIII. Where the Board of Trade do not proceed on the application they shall, not later in any year than the fifteenth day of February, if Parliament is then sitting, and if not, then within seven days after the next meeting of Parliament, lay before both Houses of Parliament a copy of the draft certificate lodged by the promoters and of the notice of opposition; and

the promoters shall be at liberty to seek by way of bill in the same session, in such manner and on such conditions as the Houses of Parliament respectively by standing order or otherwise from time to time direct, such powers as were sought by them by way of certificate.

27 & 28 Vict.
c. 120.

Settlement of Draft Certificate.

IX. Where the Board of Trade proceed on the application, then, on being satisfied that the company have complied with the requirements of the general rules respecting notice, they may, if they think fit, settle a draft of a certificate, certifying to the effect following; namely,

Power to Board
of Trade to
settle certificate
according to
nature of appli-
cation as herein
named.

In the first-mentioned case, that the companies in the certificate specified are authorised to agree among themselves with respect to all or any of the matters aforesaid in the certificate specified;

In the secondly-mentioned case, that the time limited for the sale by the company of superfluous lands is extended as in the certificate specified;

In the thirdly-mentioned case, that the company are authorised to raise, as capital, for the purposes of the certificate, such additional sum of money as therein limited, by the issue of new shares or new stock, either ordinary or preference, or partly ordinary and partly preference, or partly in that mode and partly by borrowing on mortgage, at the option of the company, or as may be prescribed in the certificate, and with power to create and issue debenture stock.

X. The Board of Trade may (subject to the provisions of this act, and having regard to the provisions of any special act relating to any company empowered by a certificate) insert in the certificate such provisions as they, according to the circumstances of the case, deem necessary or proper for better effectuating the purposes of the certificate, and the same shall be deemed to all intents part of the certificate.

Insertion of con-
ditions in certi-
ficate.

XI. The certificate may be in the form set forth in the schedule to this act, with such provisions as aforesaid.

Form of certi-
ficate.

Submission of Draft Certificate to Houses of Parliament.

XII. The Board of Trade shall lay the draft certificate settled by them before both Houses of Parliament within seven days after the same is settled, if Parliament is then sitting, or if not, then within seven days after the next meeting of Parliament, but not later in any year than the first day of June.

Draft certificate
to be laid before
Houses of Parlia-
ment.

27 & 28 Vict.
c. 120.
—
Notice thereof to
be given.

XIII. On the draft certificate being settled the promoters shall give notice thereof according to general rules under this act.

If neither House
resolve that cer-
tificate ought not
to be made, it
shall not be pro-
ceeded with.

XIV. If neither House of Parliament within six weeks after the draft of a certificate settled by the Board of Trade is laid before that House resolves that the certificate ought not to be made, the same shall not be further proceeded with.

Issue and Publication of Certificate.

If neither House
resolve that
certificate ought
not to be made,
Board of Trade
may issue the
same.

XV. If neither House of Parliament within the period aforesaid thinks fit to resolve that the certificate ought not to be made, then as soon as the period of six weeks after the laying of the draft certificate before both Houses of Parliament has expired the Board of Trade may make and issue a certificate in conformity with such draft.

Publication of
certificate in
Gazette.

XVI. The certificate shall be published as follows; namely,
Where one company only is thereby empowered, then in the *London, Edinburgh, or Dublin Gazette*, according as the head-office of the company is situate in *England, Scotland, or Ireland*:

Where two or more companies are thereby empowered, then in one or more of the *Gazettes*, according as the several head-offices of the companies respectively are situate in *England, Scotland, and Ireland* respectively.

Effect of Certificate.

Operation of cer-
tificate as special
act.

XVII. As from the time (not being prior to such publication) in the certificate prescribed, and if none is prescribed then as from the time of such publication, the certificate shall have the same force and operation, and shall be as absolutely valid and conclusive to all intents, as if the contents thereof (taken in conjunction with this act) had been expressly enacted by Parliament; and the validity of the certificate shall not be impeached on account of any alleged informality in any court or elsewhere.

Judicial notice
of certificate.

XVIII. The certificate shall be judicially noticed without being specially pleaded.

Interpretation of
certificate.

XIX. Terms used in the certificate shall have the same meanings as they have when used in this act.

Parts of 26 & 27
Vict. cc. 92 &
118 incorporated.

XX. There shall be incorporated with the certificate (which shall for this purpose be deemed the special act)—

Restriction on Exercise of Powers. clxxv

In the first-mentioned case, part iii. of The Railways
Clauses Act, 1863 (a);

27 & 28 VICT.
c. 120.

In the thirdly-mentioned case, the Companies Clauses Acts.

(a) See this act in the text, *ante*.

XXI. In the first-mentioned case, during the continuance of
any agreement for the joint working of any two railways, in the
calculation of tolls and charges for short distances in respect of
traffic conveyed on both railways, the distances traversed shall
be reckoned continuously on such railways as if they were one
railway.

Rule as to short
distances.

XXII. It shall not be lawful for any company empowered by
a certificate under this act to issue any share created under the
authority of the certificate, nor shall any such share vest in the
person accepting the same, unless and until a sum not being
less than one-fifth part of the amount of such share is paid up
in respect thereof.

Restriction as to
issue of shares.

XXIII. In the thirdly-mentioned case the company, whether
incorporated by special act or by certificate, shall be subject to
the following restrictions; namely,

Restrictions on
company as to
borrowing, &c.

1. They shall not exercise any power of borrowing money under the certificate until the whole of the share capital authorised by the certificate is subscribed for or taken, and until one-half thereof is actually paid up, and until they prove to the justice who is to certify under section 40 of The Companies Clauses Consolidation Act, 1845, or (in *Scotland*) to the sheriff who is to certify under section 42 of the Companies Clauses Consolidation (*Scotland*) Act, 1845, as the case may be, before he so certifies, that shares for the whole of the capital are issued and accepted, and that not less than one-fifth part of the amount of each separate share has been paid up on account thereof before or at the time of the issue or acceptance thereof, and that all such shares are taken in good faith, and are held by the subscribers or their assigns, those subscribers or their assigns being legally liable for the same, (of which matters the certificate of the justice or sheriff shall be sufficient evidence:)
2. They shall not borrow a larger sum in the whole than one-third of the amount of the share capital authorised by the certificate:
3. They shall not, out of money raised under the certificate by calls or borrowing, pay interest or dividend to a shareholder on the amount of calls made on his shares,

27 & 28 Vict.
c. 120.

whether created under the certificate or otherwise, (but this provision shall not prevent them paying to a shareholder under the certificate such interest on money advanced by him beyond the amount of calls actually made as is allowed by the Companies Clauses Acts :)

4. They shall not, out of money so raised, pay or deposit any money that may be required to be paid or deposited in relation to any application to Parliament or the Board of Trade :
5. They shall apply every part of the money so raised only for the purposes for which it is by the certificate authorised to be applied.

Miscellaneous.

Power to Board
of Trade to reject
application.

XXIV. Nothing in this act shall make it obligatory on the Board of Trade to settle a draft of a certificate in any case if it appears to the Board of Trade for any reason that the application for a certificate should not be complied with.

Nothing to
exempt railways
from operation of
general acts.

XXV. Nothing in the certificate shall exempt any railway to which it relates, or the company to whom that railway belongs, from the provisions of any general act of Parliament relating to railways, or to the better audit of the accounts of railway companies, passed before or after the issuing of the certificate, or from any revision and alteration, under the authority of Parliament, of the maximum tolls and charges allowed to be taken in respect of that railway.

Certificate under
this and Railways
Construction Act.

XXVI. A certificate may be made under this act and "The Railways Construction Facilities Act, 1864" (a), jointly, and in any such case the forms of certificate given in this act and the said act may be adapted to the circumstances of the case.

(a) See this act, *post*.

Approval by
members of com-
pany required, as
under standing
orders.

XXVII. Where, in case the company were proceeding by a railway bill instead of under this act, the approval of the bill in any manner by the members of the company would be required under the standing orders of either House of Parliament for the time being in force, the Board of Trade shall not issue a certificate without being satisfied that the members of the company have in like manner approved of the application to the Board of Trade.

Power for Board
of Trade to
amend or revoke
certificate.

XXVIII. Subject and according to the restrictions and provisions of this act, the Board of Trade, on the application of the company, may from time to time amend, extend, or vary by

Proof of Certificate—Application of Act. clxxvii

certificate any certificate issued under this act, and may by 27 & 28 Vict.
certificate revoke a previous certificate issued under this act. c. 120.

XXIX. If in any case it is made to appear to the Board of Trade that any error has been committed in a certificate or in relation thereto, the Board of Trade may, subject and according to the restrictions and provisions of this act, on the application of the company, body, or person affected by the error, and on notice to the company or companies empowered by the certificate, correct the error by a further certificate. Power to correct error

XXX. A copy of the *London* or *Edinburgh* or *Dublin Gazette*, containing a certificate or a copy of a certificate, purporting to be printed by the printers of the *London*, *Edinburgh*, or *Dublin Gazette*, shall be conclusive evidence of the certificate and of the due publication thereof, without any proof of the *Gazette*, or without any proof of the copy having been in fact so printed, as the case may be. Proof of certificate.

XXXI. Every company empowered by a certificate shall at all times keep at their head office copies of the certificate printed by the printers of the *Gazette* or one of the *Gazettes* in which the same was published in such form as general rules direct, to be sold to all persons desiring to buy the same at a price not exceeding one shilling for each copy. Copies of certificate for sale.

If any company fail to comply with this provision they shall be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds for every day during which such failure continues after the first penalty is incurred.

XXXII. The provisions of this act relative to the first-mentioned case and to the secondly-mentioned case respectively shall extend and apply, *mutatis mutandis*, to the proprietors of a railway although not incorporated as a company. Application of act to proprietors of railways generally.

XXXIII. Penalties under this act or under a certificate, the recovery and application whereof are not otherwise provided for, shall be recovered and applied as penalties under "The Railways Clauses Consolidation Act, 1845," and "The Railways Clauses Consolidation (Scotland) Act, 1845," as the case may require, are recoverable and applicable. Recovery and application of penalties.

XXXIV. The act of the session of the seventh year of King William the Fourth and the first year of Her Majesty, (chapter eighty-three,) "to compel clerks of the peace and other persons to take the custody of such documents as shall be directed to Custody of documents. 7 Will. IV. & 1 Vict. c. 83.

27 & 28 VICT.
c. 120.

be deposited with them under the standing orders of either House of Parliament " (a), shall apply to documents required to be deposited by general rules under this act.

(a) See this act, *ante*, p. i.

General rules in
schedule with
power for amend-
ment.

XXXV. The general rules under this act shall in the first instance be those set forth in the schedule to this act; and the Board of Trade may from time to time, for the better execution of this act, make general rules adding to, altering, or revoking any general rules for the time being in force under this act; but any general rules so made by the Board of Trade shall not have effect unless and until they are laid before both Houses of Parliament; and if either House of Parliament, within six weeks after the same are laid before that House, thinks fit to resolve that the same or any part thereof ought not to take effect, the same or that part thereof (as the case may be) shall not take effect; otherwise all rules made by the Board of Trade under the present section shall be of the same force and effect as if they had been comprised in the schedule to this act.

All general rules which are to take effect under the present section shall be published in the *London, Edinburgh, and Dublin Gazettes*.

Annual report to
Parliament by
Board of Trade.

XXXVI. Not later than the first day of July in each year the Board of Trade shall lay before both Houses of Parliament a report respecting the applications to and proceedings of the Board of Trade under this act during the year then last past.

The SCHEDULE referred to in the foregoing act.

1. NOTICE OF OPPOSITION, (s. 4, *ante*.)

In the Matter of
The Railway Companies' Powers Act, 1864,
and

The application of the Railway Company for a
certificate, the draft whereof is intituled, [*set out title.*]
We, the Railway [or Canal] Company, hereby declare
and give notice that we desire to be heard by counsel, agents, and wit-
nesses against the granting to the above-named railway company of the
powers sought to be obtained by them by the above-mentioned appli-
cation.

Dated this day of 18 .
Witness, A.B.

L. S.

2. FORM OF CERTIFICATE OF BOARD OF TRADE. (s. 11, *ante*.)

27 & 28 VICT.
c. 120.

The Railway Company.
Certificate of the Board of Trade for the extension of time
for sale of superfluous lands, [or as the case may be.]

Whereas the _____ Railway Company have complied with the requirements of The Railway Companies' Powers Acts, 1864:

Now, therefore, the Board of Trade do, by this their certificate, in pursuance of the said act, and by virtue and in exercise of the powers thereby in them vested, and of every other power enabling them in this behalf, certify as follows :

[Here are to follow the provisions of the certificate showing the powers conferred and the terms and conditions (if any) imposed.]

(Signed) C.D.

The Board of Trade,
Whitehall.

Dated this day of

3. GENERAL RULES.

Form of Application.

1. The application to the Board of Trade for a certificate is to be made by a memorial in writing under the common seal of the company, lodged at the office of the Board of Trade, (s. 4, *ante*.)

2. Together with the memorial the company are to lodge a printed draft of the certificate as proposed by the company. (s. 4, *ante*.)

Advertisements as to Application.

3. Notice of the application to the Board of Trade is to be given by advertisement published as follows; namely,

In every case, once in each of three successive weeks in some one and the same newspaper of the county, city, or town, or county of a city or town, wherein the head office of the promoters is situate:

In the case referred to in the foregoing act as the first-mentioned case, once in each of three successive weeks in some one and the same newspaper of each county, city, or town, or county of a city or town, wherein the head office of any railway company with whom the promoters propose to enter into an agreement is situate :

If in any case there is not any such newspaper as hereinbefore described, then in like manner in a newspaper of some adjoining or neighbouring county :

In every case where one company only is proposed to be empowered, then in the *London, Edinburgh, or Dublin Gazette*, according as the head office of the company is situate in England, Scotland, or Ireland :

In every case where two or more companies are proposed to be empowered, then in one or more of the *Gazettes*, according as the several head offices of the company respectively are situate in England, Scotland, and Ireland respectively.

4. The advertisements are to be published either in the month of June or in the month of November, and not at any other time.

5. Each advertisement is to give the address of an office in London where copies of the draft certificate will be supplied as hereinafter directed.

27 & 28 VICT.
c. 120.

6. Each advertisement is to state that all persons desirous of making to the Board of Trade any representation, or of bringing before them any objection, respecting the application, may do so by letter addressed to the Secretary of the Board of Trade on or before the first day of August or first day of January next succeeding the date of the advertisement, according as the same is published in the month of June or in the month of November.

7. Within one week after the publication of the latest advertisement a copy of each of the newspapers and Gazettes containing the several advertisements is to be lodged at the office of the Board of Trade.

Notice to Landowners.

8. In the case referred to in the foregoing act as the secondly-mentioned case, the promoters, in the month of June or in the month of November (as the case may be) in which the advertisements are published, are to serve notice of the application on the owners of lands adjoining to the lands to which the application relates.

Notice of Opposition.

9. Notice of opposition by a railway or canal company is to be lodged at the office of the Board of Trade, not later than the first day of August or first day of January next succeeding the date of the advertisement of application, according as the same is published in the month of June or in the month of November.

Notice of Settlement of Draft Certificate.

10. On the draft certificate being settled by the Board of Trade the promoters are to serve a copy thereof, with a notice that the draft has been settled by the Board of Trade, on every company, body, or person by whom any representation or objection respecting the application was made to or brought before the Board of Trade, and are also to give by advertisement or otherwise such public or other notice (if any) thereof as according to the circumstances of the case the Board of Trade direct.

Supply of Copies of Draft Certificate.

11. From the time of the publication of the first advertisement the promoters are to keep in the office mentioned in this behalf in the advertisement a sufficient number of copies of the draft of the certificate as proposed by them, and are to furnish their copies to all persons applying for them at the price of not more than sixpence each.

12. From the time of the settlement of the draft certificate by the Board of Trade the promoters are to keep in the office aforesaid copies of the draft supplied to them for that purpose by the Board of Trade, and are to furnish there copies thereof to all persons applying for them at such price (if any) as the Board of Trade from time to time direct.

Printing of Certificate.

13. Copies of the certificate printed by the printers of a Gazette are to be printed on ordinary white folio paper, similar in size to the paper on which the public general acts of Parliament are printed for public sale.

RAILWAYS CONSTRUCTION FACILITIES ACT, 27 & 28 VICT.
1864. c. 121.

(27 & 28 VICT. C. 121.)

An Act to facilitate in certain Cases the obtaining of Powers for the Construction of Railways.—[29th July 1864.]

WHEREAS it is expedient to facilitate the making of branch and other lines of railway, and deviations of existing railways, and of railways in course of construction, and also the execution of new works connected with or for the purposes of existing railways :

And whereas the object aforesaid would be promoted if, where all landowners and other parties beneficially interested are consenting to the making of a railway or the execution of a work, the persons desirous of making or executing the same were enabled to obtain power to do so, on complying with the conditions of a general act of Parliament, without being obliged to procure a special act :

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

I. This act may be cited as The Railways Construction Short title.
Facilities Act, 1864.

II. In this act—

The term "lands" includes any estate, right, or interest in lands: Interpretations.

The term "the promoters" means in each case the company "Lands."
"Promoters."

or persons intending to apply to the Board of Trade for such a certificate as is hereinafter provided for, and, after the application is made, the company or persons actually making the application, as the case may require :

The term "the railway" means in each case the railway and "Railway."
works intended by the promoters before the issuing of the certificate, and, after the issuing thereof, the railway and works therein comprised, as the case may require :

The term "the Lands Clauses Acts" means, so far as the "Lands Clauses
Acts."
enactment in which that term is used relates to *England*, or to a certificate to be operative in *England*, "The Lands Clauses Consolidation Act, 1845 ;" and, so far as the same relates to *Scotland*, or to a certificate to be operative in *Scot-*

27 & 28 Vict.
c. 121.

land, "The Lands Clauses Consolidation (Scotland) Act, 1845;" together with in each case, "The Lands Clauses Consolidation Acts Amendment Act, 1860;" and so far as the same relates to *Ireland*, or to a certificate to be operative in *Ireland*, "The Railways Act (Ireland) 1851," together with acts incorporated in or amending that act.

"Companies
Clauses Acts."

The term "the Companies Clauses Acts" means, so far as the enactment in which that term is used relates to *England* or *Ireland*, or to a certificate to be operative in *England* or *Ireland*, "The Companies Clauses Consolidation Act, 1845;" and so far as the same relates to *Scotland*, or to a certificate to be operative in *Scotland*, "The Companies Clauses Consolidation (Scotland) Act, 1845;" together with, in each case, "The Companies Clauses Act, 1863."

"Railways
Clauses Acts."

The term "the Railways Clauses Acts" means, so far as the enactment in which that term is used relates to *England* or *Ireland*, or to a certificate to be operative in *England* or *Ireland*, "The Railways Clauses Consolidation Act, 1845;" and, so far as the same relates to *Scotland*, or to a certificate to be operative in *Scotland*, "The Railways Clauses Consolidation (Scotland) Act, 1845;" together with, in each case, "The Railways Clauses Act, 1863:"

"Railway Bill."

The term "Railway Bill" means a bill pending in or intended to be introduced into either House of Parliament, having for its object, or one of its objects, to authorise the making of a railway:

"Board of
Trade."

The term "the Board of Trade" means the Lords of the Committee for the time being of Her Majesty's Privy Council appointed for the consideration of matters relating to trade and foreign plantations.

Contracts for Lands.

Power for promoters of railway and all persons interested in land to enter into provisional contracts for land required.

III. Where promoters of a railway intend to apply, under this act, for authority to make the railway, they and all parties seized or possessed of or entitled to lands required for the railway shall, in order to the purchase or taking and sale of those lands for the railway, have all such powers and capacities as, in order to the purchase or taking and sale of lands required for an undertaking authorised by a special act of Parliament, are conferred by the Lands Clauses Acts on the promoters of the undertaking so authorised and on parties seized or possessed of or entitled to lands, or any estate, right, or interest in lands, required for that undertaking; all which powers and capacities shall be enjoyed and may be exercised by the promoters, and by all such parties as aforesaid, as fully and effectually in all respects as if

the promoters had obtained a special act incorporating the Lands Clauses Acts, and authorising them to make the railway, and to purchase or take the lands required for the same; subject, nevertheless, to the following restrictions and provisions; namely,

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- (1.) Nothing herein shall confer on the promoters and parties aforesaid any of the powers or capacities conferred by the part of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement, or by the part of those acts with respect to the entry upon lands by the promoters of the undertaking, or by such provisions of those acts as provide for the determination or ascertainment of the amount of any purchase or compensation money, or the settlement of any apportionment or other matter, otherwise than by agreement, (except only as to such of those provisions as provide for the determination of the amount of compensation to be paid for enfranchisement of copyholds; and for the purposes of the present section, section 96 of the Lands Clauses Consolidation Act, 1845, relating to the enfranchisement of copyholds, shall be read and have effect as if the limitation of time therein contained were omitted therefrom :)
- (2.) Any party under disability or incapacity, and not having power to sell and convey or release any lands, except under the Lands Clauses Acts, as applied by the present section, shall have capacity only to contract with the promoters for the sale of those lands, and shall not (before such a certificate of the Board of Trade, as is hereinafter provided for, comes into operation) have capacity, further or otherwise than if this act had not been passed, to carry the contract into execution, or in pursuance thereof to convey or deliver possession of or release those lands :
- (3.) The promoters (before such a certificate as aforesaid comes into operation) shall be empowered by this act only to contract for lands, and they shall not have capacity, further or otherwise than if this act had not been passed, to take or hold lands.

IV. Where lands required for the railway belong to or are enjoyed by Her Majesty the Queen, her heirs or successors, in right of the Crown, or form part of the possessions of the Duchy of Lancaster or of the Duchy of Cornwall, any contract for the purposes of this act may be entered into in respect of those lands, as follows : namely,

Contracts for sale
of lands belong-
ing to the Crown
or Duchy of Lan-
caster or Corn-
wall.

In the first-mentioned case, by the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or one of

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them, with the consent of the Commissioners of Her Majesty's Treasury ;

In the secondly-mentioned case, by the Chancellor of the Duchy by writing under his hand attested by the Clerk of the Council of the Duchy ;

In the thirdly-mentioned case, by the Duke of Cornwall or other the persons for the time being empowered to dispose for any purpose of lands of the Duchy.

User of or interference with public or turnpike roads.

V. Notwithstanding anything in this act, it shall not be necessary for the promoters, before applying under this act for authority to make the railway, to enter into any contract with respect to any part of a turnpike road or public highway intended to be taken or used, or to be diverted or otherwise interfered with, for the purposes of the railway ; but the Board of Trade, before they settle a draft of such a certificate as hereinafter provided for, shall be satisfied that due provision is made for the interests of the trustees or other persons having the management of every such road or highway, and for the safety and convenience of the public in relation thereto.

Application for Certificate.

After land contracted for, power for promoters to apply for certificate, publish notices, &c.

VI. When the promoters have contracted for the purchase of all the lands required for the railway, and are desirous of obtaining a certificate under this act, they shall proceed as follows : namely,

- (1.) They shall apply to the Board of Trade for a certificate under this act :
- (2.) They shall deposit maps, plans, sections, and books of reference, and an estimate of the expense of the construction of the railway, and lodge a draft of the certificate as proposed by them, according to the general rules under this act :
- (3.) They shall publish notice of the application according to such general rules.

Consideration of application by Board of Trade.

VII. As soon as conveniently may be after the time for completion of the required deposit and notice, the Board of Trade shall proceed to inquire in such manner and to such extent as shall appear to them sufficient, whether the promoters have contracted for the purchase of all the lands required for the railway, and to inquire whether the promoters have complied with the requirements of the general rules respecting deposit and notice.

Board of Trade to consider all

VIII. The Board of Trade, before settling the draft of a

Certificate for Construction of Railway. clxxxv

certificate, shall take into consideration any representation made to them, and shall duly inquire into the merits of any objection brought before them respecting the application.

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—
representations
and objections.

Opposition of Railway or Canal Company to Undertaking.

IX. If in any case any railway or canal company desire to be heard by counsel, agents, and witnesses against the proposed undertaking, and (within such time as is prescribed by general rules under this act) lodge at the office of the Board of Trade a notice in writing to that effect (hereinafter referred to as a notice of opposition) in the form set forth in the schedule to this act, (with such variations as circumstances require,) in that case the Board of Trade, if the railway or canal company lodging the notice would be affected in any way by the proposed undertaking, shall not proceed on the application of the promoters.

On railway or
canal company
affected giving
notice of opposi-
tion, proceedings
before Board of
Trade to cease.

X. Where the Board of Trade do not proceed on the application, they shall, not later in any year than the fifteenth day of February, if Parliament is then sitting, and if not, then within seven days after the next meeting of Parliament, lay before both Houses of Parliament a copy of the draft certificate lodged by the promoters and of the notice of opposition; and the promoters shall be at liberty to seek by way of bill in the same session, in such manner and on such conditions as the Houses of Parliament respectively, by standing order or otherwise, from time to time direct, such powers as were sought by them by way of certificate.

Further proceed-
ings to be in
Parliament.

Settlement of Draft Certificate.

XI. Where the Board of Trade proceed on the application, then on being satisfied that the promoters have contracted for the purchase of all the lands required for the railway, and have complied with the requirements of the general rules respecting deposit and notice, they may, if they think fit, settle a draft of a certificate certifying to the effect that the company, or persons therein specified, are authorised to make the railway therein described.

Power of Board
of Trade to settle
certificate.

XII. The Board of Trade may (subject to the provisions of this act) insert in the draft certificate such provisions as they, according to the circumstances of the case, deem necessary or proper for better effectuating the purposes of the certificate; and the same shall be deemed to all intents part of the certificate.

Insertion of con-
ditions in certi-
cate.

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Form of certifi-
cate.

XIII. The certificate may be in the form set forth in the schedule to this act, with such provisions as aforesaid.

Submission of Draft Certificate to Houses of Parliament.

Draft certificate
to be laid before
Houses of Parli-
ament.

XIV. The Board of Trade shall lay the draft certificate settled by them before both Houses of Parliament, within seven days after the same is settled, if Parliament is then sitting, and if not, then within seven days after the next meeting of Parliament, but not later in any year than the first day of June.

Notice thereof to
be given.

XV. On the draft certificate being settled, the promoters shall give notice thereof according to general rules under this act.

If either House
resolve that cer-
tificate ought not
to be made, it
shall not be pro-
ceeded with.

XVI. If either House of Parliament, within six weeks after the draft of a certificate settled by the Board of Trade is laid before that House, resolves that the certificate ought not to be made, the same shall not be further proceeded with; and in that case all contracts for the purchase or taking of lands for the purposes of the undertaking shall cease to be binding on either party.

Issue, Publication, and Effect of Certificate.

If neither House
resolve that cer-
tificate ought not
to be made, Board
of Trade may
issue the same.

XVII. If neither House of Parliament within the period aforesaid thinks fit to resolve that the certificate ought not to be made, then as soon as the period of six weeks after the laying of the draft certificate before both Houses of Parliament has expired, the Board of Trade may make and issue a certificate in conformity with such draft.

Publication of
certificate in
Gazette.

XVIII. The certificate shall be published in the *London or Edinburgh or Dublin Gazette*, respectively, if the railway will be situate wholly in *England or Scotland*, or in *Ireland*; and shall be published both in the *London* and in the *Edinburgh Gazette*, if the railway will be situate partly in *England* and partly in *Scotland*.

Operation of
certificate
as special act.

XIX. As from the time (not being prior to such publication) in the certificate prescribed, and if none is prescribed then as from the time of such publication, the certificate shall have the same force and operation, and shall be as absolutely valid and conclusive to all intents, as if the contents thereof (taken in conjunction with this act) had been expressly enacted by Parliament; and the validity of the certificate shall not be im-

Application of Lands Clauses Act. clxxxvii

peached on account of any alleged informality in any court or elsewhere. 27 & 28 Vict.
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XX. The certificate shall be judicially noticed without being specially pleaded. Judicial notice
of certificate.

XXI. Terms used in the certificate shall have the same meanings as they have when used in this act. Interpretation
of certificate.

Duration of Powers under Certificate.

XXII. If the company, or persons by the certificate empowered to make the railway, do not within five years from the commencement of the operation of the certificate, or within any shorter period prescribed therein, complete the railway and open it for public traffic, then (subject to any provisions and qualifications in the certificate contained) all the powers and authorities given by the certificate shall, from and after the expiration of the time aforesaid, cease, except as to so much of the railway as is then completed. Cesser of powers
at expiration of
prescribed time.

Lands.

XXIII. The Lands Clauses Acts shall be incorporated with the certificate (which shall for this purpose be deemed the special act) except as may be therein excepted, and except as to the following provisions; namely, Incorporation of
Lands Clauses
Acts in certifi-
cate, except
provisions giv-
ing compulsory
powers, &c.

- (1.) With respect to the purchase and taking of lands otherwise than by agreement:
- (2.) With respect to the entry upon lands by the promoters of the undertaking:
- (3.) So much of those acts as provides for the determination or ascertainment of the amount of any purchase or compensation money, or the settlement of any apportionment or other matter, otherwise than by agreement, (but excluding from this exception so much of those acts as provides for the determination of the amount of compensation to be paid for enfranchisement of copyholds.)

Incorporation of Company.

XXIV. Where the promoters are not a company incorporated, (by special act, or by previous certificate under this act,) and are seven or more in number, a company shall be incorporated by the certificate, for the purposes thereof. In what cases
company shall
be incorporated

XXV. Where the promoters are not a company incorporated by special act, or by previous certificate under this act, and are In others com-
pany may be in-
corporated.

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less than seven in number, a company may be incorporated by the certificate for the purposes thereof, if the promoters so desire.

Power for Board
of Trade to in-
corporate com-
pany by certifi-
cate.

XXVI. Where the certificate incorporates a company, it shall contain proper provisions with apt terms for creating a body corporate, by an appropriate name, with perpetual succession and a common seal, and with power to take, hold, and dispose of lands and other property, for the purposes and subject to the restrictions of the certificate, and may confer on the company power to borrow on mortgage, and all other usual or proper powers.

Incorporation
of Companies
Clauses Acts.

XXVII. In every such case, the Companies Clauses Acts shall be incorporated with the certificate, (which shall be deemed the special act.)

Restriction as to
issue of shares.

XXVIII. It shall not be lawful for any company empowered by a certificate under this act to issue any share created under the authority of the certificate, nor shall any such share vest in the person accepting the same, unless and until a sum not being less than one-fifth part of the amount of such share is paid up in respect thereof.

Restrictions on
company as to
borrowing, &c.

XXIX. Every company, whether incorporated by special act or by certificate, empowered by a certificate to borrow money, shall, as regards the money so authorised to be borrowed, be subject to the following restrictions: namely,

- (1.) They shall not exercise the said powers of borrowing any money until the whole of the share capital authorised by the certificate is subscribed for or taken, and until one-half thereof is actually paid up, and until they prove to the justice who is to certify under section 40 of The Companies Clauses Consolidation Act, 1845, or (in *Scotland*) to the sheriff who is to certify under section 42 of The Companies Clauses Consolidation (Scotland) Act, 1845, as the case may be, before he so certifies, that shares for the whole of the capital are issued and accepted, and that not less than one-fifth part of the amount of each separate share has been paid up on account thereof before or at the time of the issue or acceptance thereof, and that all such shares were taken in good faith, and are held by the subscribers or their assigns, those subscribers or their assigns being legally liable for the same, (of which matters the certificate of the justice or sheriff shall be sufficient evidence:)

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- (2.) They shall not borrow a larger sum in the whole than one-third of the amount of the share capital authorised by the certificate: 27 & 28 Vic
c. 121.
- (3.) They shall not out of money raised under the certificate by calls or borrowing pay interest or dividend to a shareholder on the amount of calls made on his shares, whether created under the certificate or otherwise; (but this provision shall not prevent them paying to a shareholder under the certificate such interest on money advanced by him beyond the amount of calls actually made, as is allowed by the Companies Clauses Acts:)
- (4.) They shall not out of money so raised pay or deposit any money that may be required to be paid or deposited in relation to any application to Parliament or the Board of Trade:
- (5.) They shall apply every part of the money so raised only for purposes for which it is by the certificate authorised to be applied.

XXX. Contracts relative to the purchase or taking of lands for the railway, entered into by the promoters before the incorporation of the company by the certificate, shall be as binding on the company as if they had been entered into by the company (a).

(a) See the notes to s. 6 of the Lands Clauses Act, 1845, *ante*, p. 147, *et seq.*

Construction of Railway.

XXXI. The Railways Clauses Acts shall be incorporated with the certificate, (which shall be deemed the special act,) except as may be therein excepted, and except as to the following provisions: namely, Incorporation of
Railways Clause
Acts in certificate,
except as to compulsory
powers, &c

- (1.) Such of the provisions with respect to the construction of the railway and the works connected therewith as relate to the correction of errors and omissions in plans or to plans and sections of alterations:
- (2.) With respect to the temporary occupation of lands near the railway during the construction thereof:
- (3.) With respect to leasing the railway:
- and subject to the following provisions: namely,
- (1.) Nothing herein shall confer power for the taking or using of lands for deviation or for any other purpose, otherwise than by agreement:
- (2.) Any provision referring to the datum line described in the section approved of by Parliament shall be read as referring to the datum line described in the section approved of by the Board of Trade.

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Restriction on
alterations of
plan or section.

XXXII. Where the promoters desire to make any alteration in the deposited plan or section, they may do so with the consent of the Board of Trade; but the Board of Trade shall not settle a draft of a certificate without being satisfied that all parties interested in lands liable to be affected by or in consequence of the alteration consent thereto.

Provision re-
specting gauge.

XXXIII. Every railway made under this act in *England* or *Scotland* shall be made on the gauge of four feet eight inches and half an inch, unless in any case the certificate prescribes the making of the railway on the gauge of seven feet or on both those gauges.

Every railway made under this act in *Ireland* shall be made on the gauge of five feet three inches.

Provisions to secure Completion of Railway.

Promoters to
deposit eight per
cent. on esti-
mate in Court of
Chancery, &c.

XXXIV. After the certificate is ready to be issued, and before the same is issued, by the Board of Trade, the promoters, unless they are a previously existing company possessed of a railway open for public traffic, shall, within such time as general rules under this act direct, pay as a deposit a sum of money not less than eight *per centum* on the amount of their estimate of the expense of the construction of the railway, as follows: namely,

Where the railway or any part thereof will be situate in *England*,—into the Bank of *England*, in the name and with the privy of the Accountant-General of the Court of Chancery in *England*:

Where the railway will be situate wholly in *Scotland*,—either into the Bank of *England* in manner aforesaid, or (at the option of the promoters) into a bank in *Scotland* established by Act of Parliament or Royal Charter, in the name and with the privy of the Queen's Remembrancer of the Court of Exchequer in *Scotland*:

Where the railway will be situate in *Ireland*, into the Bank of *Ireland*, in the name and with the privy of the Accountant-General of the Court of Chancery in *Ireland*.

Warrant of
Board of Trade
for payment into
court.

XXXV. The Board of Trade may issue their warrant to the promoters for such payment into court, which warrant shall be a sufficient authority for the persons therein named, or the majority or survivors of them, to pay the money therein mentioned into the bank therein mentioned, in the name and with the privy of the officer therein mentioned, and for that officer to receive the same, to be placed to his account there, *ex parte*

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the railway therein mentioned, according to the method, (prescribed by statute, or general rules or orders of court, or otherwise,) for the time being in force respecting the payment of money into the said courts respectively, and without fee or reward.

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XXXVI. Provided, that in lieu, wholly or in part, of the payment of money, the promoters may bring into court as a deposit an equivalent sum of bank annuities, or of any stocks, funds, or securities on which cash under the control of the respective court is for the time being permitted to be invested, or of Exchequer bills, (the value thereof being taken at the price at which the promoters originally purchased the same, as appearing by the broker's certificate of that purchase;) and in that case the Board of Trade shall vary their warrant accordingly.

Liberty for promoters to bring in Exchequer bills, &c.

XXXVII. At any time when the office of the Accountant-General of the Court of Chancery in *England or Ireland* is closed, a deposit under this act may nevertheless be made, in such manner as general orders of the respective courts authorise and direct.

Provision for vacations in offices of courts.

XXXVIII. Where money is so paid into the Court of Chancery in *England or Ireland*, the court may, on the application of the persons named in the warrant of the Board of Trade, or of the majority or survivors of them, order that the same be invested in such stocks, funds, or securities as the applicants desire and the court thinks fit.

Power for court to direct investment.

XXXIX. In the subsequent provisions of this act, the term "the deposit fund" means the money deposited, or the stocks, funds, or securities in which the same is invested, or the bank annuities, stocks, funds, securities, or Exchequer bills deposited, as the case may be; and the term "the depositors" means the persons named in the warrant of the Board of Trade authorising the deposit, or the majority or survivors of those persons, their executors, administrators, or assigns.

Interpretation of "deposit fund" and "depositors" in following provisions.

XL. The court in which the deposit is made shall, on the application of the depositors, order the deposit fund to be paid, transferred, or delivered out to the applicants, or as they direct, in any of the following events; namely,

Repayment of deposit on completion of railway or on terms.

- (1.) If, within the time in the certificate prescribed, and if none is prescribed, then within five years from the commencement of the operation of the certificate, the com-

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pany, or persons thereby empowered to make the railway, complete it, and open it for public traffic; or

- (2.) If, within the same time, they (being a company) prove to the satisfaction of the Board of Trade that one-half of their nominal capital authorised by the certificate is paid up, and that they have expended a like amount for the purposes of the certificate; or
- (3.) If, at any time after the issuing of the certificate, they execute and deliver to the Solicitor of Her Majesty's Treasury a bond with a surety or sureties (such bond being prepared to the satisfaction of, and such surety or sureties being approved by, the said solicitor) in a penal sum of twice the amount of the money required to be deposited, conditioned to the effect following; namely, for payment to Her Majesty, her heirs or successors, of the amount of the money required to be deposited, if the company or persons empowered by the certificate do not, within the time aforesaid, either complete the railway and open it for public traffic, or (being a company) give such proof as aforesaid respecting their capital and expenditure.

Forfeiture of
deposit on non-
completion of
railway, &c.

XLI. If the company, or persons empowered by the certificate to make the railway do not, within the time in the certificate prescribed, and if none is prescribed, then within five years from the commencement of the operation of the certificate, do one or other of the following things; namely,

- (1.) Complete the railway and open it for public traffic; or
- (2.) Give (being a company) such proof as hereinbefore mentioned respecting their capital and expenditure; or
- (3.) Execute and deliver such a bond as is hereinbefore described,—

then and in every such case the deposit fund shall, from and after the expiration of the time aforesaid, be forfeited to Her Majesty, and shall accordingly be paid, transferred, or delivered out to or for the account of Her Majesty's Exchequer, in such manner as the court in which the deposit is made thinks fit to order, on the application of the Solicitor of Her Majesty's Treasury, on notice to such parties (if any) as the court thinks fit; and the deposit fund, when so paid, transferred, or delivered, or the proceeds thereof, shall be carried to and form part of the Consolidated Fund of the United Kingdom.

Application of
money recovered
on bond.

XLII. Where any such bond as aforesaid is given, the amount recovered thereon shall be paid to the account of Her Majesty's

Exchequer, and shall be carried to and form part of the said Consolidated Fund. 27 & 28 Vict.
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XLIII. The depositors shall be entitled to receive payment of the interest or dividends from time to time accruing on the deposit fund while in court; and the court in which the deposit is made may from time to time, on the application of the depositors, make such order as seems fit respecting the payment of the interest or dividends accordingly. Depositors to receive dividends, accruing while fund in court.

XLIV. The certificate of the Board of Trade that such proof as aforesaid respecting the capital and expenditure of any company has been given to the satisfaction of the Board of Trade, and the certificate of the Solicitor of Her Majesty's Treasury that such bond as aforesaid has in any case been prepared, executed, and delivered to his satisfaction, shall respectively be sufficient evidence of the matters therein certified. Proof as to capital and expenditure, execution of bond, &c.

XLV. The issuing in any case of any warrant or certificate relating to deposit or to the deposit fund, or any error in any such warrant or certificate or in relation thereto, shall not make the Board of Trade, or the person signing the warrant or certificate on their behalf, in any manner liable for or in respect of the deposit fund, or the interest of or dividends on the same, or any part thereof respectively. Protection to Board of Trade in case of error, &c.

XLVI. Any application under this act to the Court of Chancery in *England* or *Ireland* shall be made in a summary way in such manner as general orders of these courts respectively direct. Mode of application to courts.

XLVII. The Lord Chancellor of *Great Britain*, with the advice and assistance of the Lords Justices of the Court of Appeal in Chancery and the Master of the Rolls and the Vice-Chancellors, or any two of those judges, and the Lord Chancellor of *Ireland*, with the advice and assistance of the Lord Justice of the Court of Appeal in Chancery in *Ireland* and of the Master of the Rolls in *Ireland*, may respectively from time to time make such general orders as seem fit for the regulation of the practice under this act of the Court of Chancery in *England* and *Ireland* respectively. Power for courts to make general orders.

XLVIII. Where a certificate is obtained by a previously existing company possessed of a railway open for public traffic, then, if the company fail to complete the railway and open it for public traffic within the time in the certificate prescribed, and if none is Penalty on company failing to open new railway in certain cases.

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prescribed, then within five years from the commencement of the operation of the certificate, the company shall be liable to a penalty of not less than twenty pounds and not exceeding fifty pounds for every day during which such failure continues, except only in respect of any time during which it appears from a certificate of the Board of Trade that the company were prevented from completing the railway or opening it for public traffic by unforeseen accident or circumstances beyond their control, but the want of sufficient funds shall not be deemed a circumstance beyond their control within the meaning of this provision.

Tolls and Charges for Use of Railway.

Tolls, &c., in
schedule.

XLIX. The proprietors of the railway may demand and take, in respect of the railway, tolls and charges not exceeding the sums specified in the schedule to this act, subject and according to the regulations therein specified.

Power for Board
of Trade to vary
tolls, &c.

L. The Board of Trade may nevertheless by the certificate vary the tolls and charges and regulations specified in the schedule to this act, or any of them, if in any case it seems to them necessary or proper, under the circumstances, to do so.

Application of General Railway Acts.

Enactments in
schedule applied
to the railway
and company,
subject to varia-
tions.

LI. The enactments described in the schedule to this Act, and any enactments amending, perpetuating, or otherwise affecting any of them, so far as the same are in force at the passing of this act, shall extend and apply, as the case may require, to the railway, and to the company or persons empowered by the certificate to make the railway, and shall in all respects operate in relation thereto respectively, as if they were expressly repeated and re-enacted in this act, subject, nevertheless, and according to the following variations and provisions; namely,

- (1.) For the purposes and within the meaning of any of those enactments, the railway shall be deemed to be a railway made and constructed and carried on under the authority of Parliament, and under the powers and provisions of an act of Parliament, and the certificate (taken in conjunction with this act) shall be deemed to be a special act of Parliament regulating or relating to the railway, or the company, body, or persons, empowered to make the same, (as the case may require:)
- (2.) Such of those enactments as refer to the time of the passing of an act of Parliament for the construction of a railway or to the last day of the session in which such

an act is passed, shall respectively be read and have effect as referring to the time of the commencement of the operation of the certificate :

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- (3.) The terms "company" and "railway company" used in any of those enactments shall respectively include any persons empowered by the certificate to make the railway :
- (4.) Such of those enactments as refer to the directors, or any director, or the secretary, chief or other clerk, accountant, treasurer, or other officer of a company, shall extend and apply to every or any one of the persons, (not being a company,) empowered by the certificate to make the railway :
- (5.) Such of those enactments as refer to a writing under the common seal of the company shall be read and have effect as referring to a writing under the hand and seal of any one of such persons as aforesaid :
- (6.) Such of those enactments as impose any penalty or forfeiture, or any pecuniary liability or any obligation, on a company, or give any right, remedy, or process against a company, shall be read and have effect, (so far as the nature and circumstances of the case admit,) as imposing a like penalty, forfeiture, liability, or obligation on, or as giving a like right, remedy, or process against, every or any one of such persons, as aforesaid, but not so as to authorise the recovery of any penalty or forfeiture from, or the enforcement of any pecuniary liability against, more than one of such persons in respect of the same offence, matter, or thing :
- (7.) The amount of any compensation to be made to the owners and occupiers of any lands for loss or injury or inconvenience sustained by them respectively by reason of any works done under the authority of any of those enactments shall, in case of dispute, be settled in manner directed by the Lands Clauses Acts and the Railways Clauses Acts as respectively applicable to the case :
- (8.) Such of those enactments as provide for the case of the Board of Trade certifying that the public safety requires additional land to be taken by a company for the purpose of giving increased width to the embankments or inclination to the slopes of the railway, or for making approaches to bridges or archways, or for doing works for the repair or prevention of accidents or slips happening or apprehended to the cuttings, embankments, or other works of the railway, shall be read and have effect, as regards such portions of land as are mentioned in any certificate so given by the Board of Trade, as if compulsory powers of purchasing and taking lands had been contained in the

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certificate under this act authorising the making of the railway, and the provisions of the Lands Clauses Acts and the Railways Clauses Acts relative to the compulsory purchase or taking of land had been incorporated with that certificate :

- (9.) If the railway is in any respect constructed contrary to the provisions of the certificate, or of this act, it shall be deemed to be constructed contrary to the provisions of any of those enactments applicable in the case :
- (10.) Nothing herein shall extend or make applicable, for the purposes of this act, to or in any one of the parts of the United Kingdom, any of those enactments not in force there independently of this act.

Miscellaneous.

Board of Trade
may reject the
application.

LII. Nothing in this act shall make it obligatory on the Board of Trade to settle a draft of a certificate in any case if it appears to the Board of Trade for any reason that the application of the promoters should not be complied with ; and in case the Board of Trade reject any application, all contracts for the purchase or taking of lands for the purposes of the undertaking shall cease to be binding on either party.

Saving for general
acts, or revision
of charges.

LIII. Nothing in the certificate shall exempt the railway, or the company, or persons to whom it belongs, from the provisions of any general act of Parliament relating to railways, or to the better audit of the accounts of railway companies passed before or after the issuing of the certificate, or from any revision and alteration, under the authority of Parliament, of the maximum tolls and charges allowed to be taken under the certificate.

New works in
connexion with
railway,

LIV. All the provisions of this act which relate to the making of a railway shall extend and apply, *mutatis mutandis*, to the making or executing of any work connected with or for the purposes of a railway, (as distinguished from the construction of a railway.)

Power to authorise joint
work.

LV. Subject and according to the provisions of this act, the Board of Trade may, on a joint application or on two or more separate applications, issue a certificate empowering two or more companies, or persons, respectively, to jointly make or execute the whole, or to separately make or execute parts, of a work connected with or for the purposes of a railway, and to jointly or separately use the whole or parts thereof ; and all the provisions of this act which relate to the making of a railway, or the

Additional Capital—Amendment of Certificate. cxcvii

making or executing of a work, shall extend and apply to the making or executing of the whole, and the separate parts of such work as last aforesaid; and the form of the certificate may be adapted to the circumstances of the case.

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c. 121.

LVI. Where the certificate is obtained by a previously existing company incorporated by special act or by certificate, the certificate may authorise the company to raise, as capital, for the purposes of the certificate, such additional sum of money as therein limited, by the issue of new shares or new stock, either ordinary or preference, or partly ordinary and partly preference, or partly in that mode and partly by borrowing on mortgage, at the option of the company, or as may be prescribed in the certificate, and with power to create and issue debenture stock.

Power to promoters, being a company, to raise additional capital.

In every such case the Companies Clauses Act shall be incorporated with the certificate.

In every such case the restrictions by this act imposed on a company when originally incorporated by certificate, with respect to the exercise of their borrowing power and to the application of money raised under the certificate by calls or borrowing, shall extend and apply to such previously existing company in respect of such additional capital.

LVII. Where the certificate is obtained by a previously existing company incorporated by special act or by certificate, it shall be the duty of the Board of Trade not to settle a draft of the certificate without being satisfied that the members of the company have approved of the application to the Board of Trade, in like manner as, under the standing orders of either House of Parliament for the time being in force, their approval of a railway bill would be required to be given in the same case.

Where promoters are a company, approval of application by a meeting.

LVIII. Subject and according to the restrictions and provisions of this act, the Board of Trade, on the application of any company or persons empowered by a certificate, may from time to time amend, extend, or vary by certificate the previous certificate, and may by certificate revoke the previous certificate.

Power to Board of Trade to amend or revoke certificate.

LIX. If in any case it is made to appear to the Board of Trade that any error has been committed in a certificate or in relation thereto, the Board of Trade may, subject and according to the restrictions and provisions of this act, on the application of any company, body, or person affected by the error, and on

Power to correct error.

27 & 28 Vict.
c. 121.

notice to the company or persons empowered by the certificate, correct the error by a further certificate.

Proof of certificate.

LX. A copy of the *London, Edinburgh, or Dublin Gazette* containing a certificate or a copy of a certificate, purporting to be printed by the printers of the *London, Edinburgh, or Dublin Gazette*, shall be conclusive evidence of the certificate, and of the due publication thereof, without any proof of the *Gazette*, or without any proof of the copy having been in fact so printed, as the case may be.

Copies of certificate for sale.

LXI. The company or persons empowered by a certificate shall at all times keep at their head office copies of the certificate printed by the printers of the *Gazette* or one of the *Gazettes* in which the same was published, in such form as general rules under this act direct, to be sold to all persons desiring to buy the same, at a price not exceeding one shilling for each copy.

If any company or persons fail to comply with this provision they shall be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds for every day during which such failure continues after the first penalty is incurred.

Recovery and application of penalties.

LXII. Penalties under this act or under a certificate, the recovery and application whereof are not otherwise provided for, shall be recovered and applied as penalties under the Railways Clauses Acts are recoverable and applicable.

As to custody of documents under 7 Will. IV. & 1 Vict. c. 83.

LXIII. The act of the session of the seventh year of King William the Fourth and the first year of Her Majesty, (chapter eighty-three,) "to compel clerks of the peace and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament" (a), shall apply to documents required to be deposited by general rules under this act.

(a) See this act, p. i., *ante*.

General rules in schedule with power for amendment.

LXIV. The general rules under this act shall in the first instance be those set forth in the schedule to this act; and the Board of Trade may from time to time, for the better execution of this act, make general rules adding to, altering, or revoking any general rules for the time being in force under this act; but any general rules so made by the Board of Trade shall not have effect unless and until they are laid before both Houses of Parliament, and if either House of Parliament, within six weeks

after the same are laid before that House, thinks fit to resolve that the same or any part thereof ought not to take effect, the same or that part thereof (as the case may be) shall not take effect; otherwise all rules made by the Board of Trade under the present section shall be of the same force and effect as if they had been comprised in the schedule to this act.

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c. 121.

All general rules which are to take effect under the present section shall be published in the *London, Edinburgh, and Dublin Gazettes*.

LXV. Not later than the first day of July in each year the Board of Trade shall lay before both Houses of Parliament a report respecting the applications to and proceedings of the Board of Trade under this act during the year then last past.

Annual report to
Parliament by
Board of Trade.

The SCHEDULE referred to in the foregoing Act.

L. NOTICE OF OPPOSITION, (UNDER s. 9.)

In the matter of
The Railways Construction Facilities Act, 1864,
and

The (proposed) Railway.

We, the Railway [or Canal] Company hereby declare and give notice that we desire to be heard by counsel, agents, and witnesses against the above-mentioned proposed undertaking.

Dated this day of , 18 .

Witness, *A.B.*

L. S.

II. FORM OF CERTIFICATE OF BOARD OF TRADE, (UNDER s. 13.)

The Railway.
Certificate of the Board of Trade for the construction of the railway.

Whereas the promoters of the Railway have contracted for the purchase of the lands required for the railway and the works connected therewith, and have complied with the requirements of the Railways Construction Facilities Act, 1864:

Now, therefore, the Board of Trade do, by this their certificate, in pursuance of the said act, and by virtue and in exercise of the powers thereby in them vested, and of every other power enabling them in this behalf, certify as follows:

[Here are to follow the provisions of the certificate showing the powers conferred and the terms and conditions (if any) imposed.]

The Board of Trade,
Whitehall.

Dated this day of .

(Signed) *C.D.*
Secretary to the Board of Trade.

III. TOLLS AND CHARGES.

TABLE I.

Maximum Charges for Use of Railway and Supply of Carriages, Waggon, or Trucks.

	For use of railway, per mile.	For supply of carriage, waggon, or truck by the proprietors of the railway, the additional sum per mile of
Passengers :—		
For every person,	Twopence.	One Penny.
Animals :—		
For every horse, ass, mule, or other beast of draught or burden, (class 1,)	Threepence.	One Penny.
For every ox, cow, bull, or head of neat cattle, (class 2,)	Twopence.	One Penny.
For every calf, pig, sheep, lamb, and other small animal, (class 3,)	Three Farthings.	One Farthing.
Goods (except as provided for in Table IV.) :—		
For cotton and other wools, manufactured goods, drugs, fish, and all other wares, merchandise, articles, matters, or things not enumerated in any other class, (class 4,) per ton,	Threepence.	One Penny.
For sugar, grain, corn, flour, hides, dye-woods, earthenware timber, staves, deals, and metals, (except iron,) nails, anvils, vices, chains, and light iron castings, (class 5,) per ton,	Twopence Halfpenny.	One Penny.
For coke, charcoal, pig iron, bar iron, rod iron, sheet iron, hoop iron, plates of iron, wrought iron, heavy iron castings, railway chains, slabs, billets, and rolled iron, lime, bricks, tiles, slates, salt, fireclay, and stone, (class 6,) per ton,	Three Halfpence.	One Penny.
For dung, compost, manure, undressed material for repair of public roads or highways, coals, culm, cinders, cannel, ironstone, iron ore, limestone, clay (except fireclay,) chalk, sand, and slag, (class 7,) per ton,	Five Farthings.	One Halfpenny.
For every carriage of whatever description conveyed on a truck or platform belonging to the proprietors of the railway, (class 8 :)		
If not weighing more than one ton	Sixpence.	
If weighing more than one ton, then for the first ton,	Sixpence.	
And for every additional quarter of a ton, or fractional part of a quarter of a ton, above the first ton,	Three Halfpence.	

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c. 121.

REGULATIONS.

- Short distance charge. 1. For passengers, animals, or goods conveyed on the railway for a distance less than that prescribed in the certificate as the short distance, and if none is prescribed then for a distance less than six miles, charges are to be payable as for the short distance prescribed, and if none is prescribed, then as for six miles.
- Fraction of mile ; passengers. 2. In respect of passengers, every fraction of a mile beyond an integral number of miles is to be deemed a mile.
- Fraction of mile ; animals and goods. 3. In respect of animals and goods, for a fraction of a mile beyond the short distance prescribed, or if none is prescribed then beyond six miles, or beyond any greater number of miles, charges are to be payable in proportion to the number of quarters of a mile contained in that fraction ; and a fraction of a quarter of a mile is to be deemed a quarter of a mile.
- Fraction of ton. 4. For a fraction of a ton charges are to be payable according to the number of quarters of a ton in that fraction ; and a fraction of a quarter of a ton is to be deemed a quarter of a ton.
- Passengers' luggage. 5. Every passenger travelling on the railway may, without charge, cause to be carried in the same train with him his ordinary luggage, not exceeding the weight prescribed in the certificate ; and if none is prescribed, then not exceeding the weight of one hundred and twenty pounds for a first-class passenger, one hundred pounds for a second-class passenger, and sixty pounds for a third-class passenger.
- Special trains. 6. The restriction as to charges for passengers does not extend to special trains when required by passengers, but applies only to the ordinary or express passenger or goods trains appointed by the proprietors of the railway.
- Determination of weight. 7. Except as to stone and timber, weight is to be determined according to avoirdupois weight.
Fourteen cubic feet of stone, and forty cubic feet of oak, mahogany, teak, beech, or ash, and fifty cubic feet of any other timber, are to be deemed one ton, and so in proportion for any smaller quantity.
- Terminal station charges. 8. In addition to the charges in Table III., a reasonable charge is to be payable for the loading, covering, and unloading of goods at any station, being a terminal station in respect of such goods, and for delivery and collection, and any other services incidental to the duty or business of a carrier, where such services, or any of them, are or is performed by the proprietors of the railway.
A station is not to be considered a terminal station in respect of goods, unless they are received there direct from the consignor, or are directed to be delivered there to the consignee.
- Small packages. 9. The term small packages does not include articles sent in large aggregate quantities, although made up of separate parcels, such as bags of sugar, coffee, meal, and the like ; but applies only to single parcels in separate packages.
- Agreement for higher charges. 10. Nothing herein or in the certificate contained is to prevent the proprietors of the railway from taking any charge over and above the charges hereinbefore limited for the conveyance of goods of any description by agreement with the owners of or any persons in charge of such goods, either in respect of the conveyance thereof (except small packages) by passenger trains, or by reason of any other special service performed by the proprietors of the railway in relation thereto.

IV. ENACTMENTS IN GENERAL ACTS RELATING TO RAILWAYS APPLIED TO RAILWAYS UNDER THIS ACT.

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c. 121.

Session and Chapter, and Section (if any).	Title or Short Title of Act.
1 & 2 Vict. c. 80,* . . .	An Act for the Payment of Constables for keeping the Peace near Public Works.
1 & 2 Vict. c. 98,* . . .	An Act to provide for the Conveyance of the Mails by Railways.
2 & 3 Vict. c. 45, . . .	An Act to amend an Act of the Fifth and Sixth Years of the Reign of His late Majesty King William the Fourth relating to Highways.
3 & 4 Vict. c. 97,* . . .	An Act for regulating Railways.
5 & 6 Vict. c. 55,* . . .	An Act for the better Regulation of Railways, and for the Conveyance of Troops.
5 & 6 Vict. c. 79,* ss. 2 to 7, (both inclusive,) and ss. 24, 25, 26,	An Act to repeal the Duties payable on Stage Carriages, and on Passengers conveyed upon Railways, and certain other Stamp Duties in Great Britain, and to grant other Duties in lieu thereof; and also to amend the Laws relating to Stamp Duties.
7 & 8 Vict. c. 85,* . . .	An Act to attach certain Conditions to the Construction of future Railways authorised or to be authorised by any Act of the present or succeeding Sessions of Parliament, and for other Purposes relating to Railways.
8 & 9 Vict. c. 3,	An Act for the Appointment of Constables or other Officers for keeping the Peace near Public Works in Scotland.
8 & 9 Vict. c. 46. . . .	An Act for the Appointment of additional Constables for keeping the Peace near Public Works in Ireland.
9 & 10 Vict. c. 57,* ss. 4, 6, 7, 8, . . .	An Act for regulating the Gauge of Railways.
10 & 11 Vict. c. 85. s. 16,* . . .	An Act for giving further Facilities for the Transmission of Letters by Post, and for Regulating the Duties of Postage thereon, and for other Purposes relating to the Post Office.
14 & 15 Vict. c. 64,* . . .	An Act to repeal the Act for constituting Commissioners of Railways.
17 & 18 Vict. c. 31,* . . .	The Railway and Canal Traffic Act, 1854.
18 & 19 Vict. c. 122, s. 6, . . .	An Act to amend the Laws relating to the Construction of Buildings in the Metropolis and its Neighbourhood.
20 & 21 Vict. c. 31. s. 4, . . .	An Act to amend and explain the Inclosure Acts.

* The acts marked with an asterisk will be found in the Appendix in their chronological order.

27 & 28 VICT.
c. 121.ENACTMENTS IN GENERAL ACTS—*continued.*

Session and Chapter, and Section (if any).	Title or Short Title of Act.
21 & 22 Vict. c. 75,* . . .	An Act to Amend the Laws relating to Cheap Trains, and to restrain the Exercise of certain Powers by Canal Companies, being also Railway Companies.
22 & 23 Vict. c. 59,* . . .	Railway Companies Arbitration Act, 1859.
26 & 27 Vict. c. 33, ss. 13, 14,*	An Act for granting to Her Majesty certain Duties of Inland Revenue, and to amend the Laws relating to the Inland Revenue.
26 & 27 Vict. c. 112, s. 32, .	The Telegraph Act, 1863.

V. GENERAL RULES.

Form of Application.

1. The application to the Board of Trade for a certificate is to be made by a memorial in writing, signed by the promoters, or some or one of them, and lodged at the office of the Board of Trade.
2. Together with the memorial the promoters are to lodge—
 - (a) A printed draft of the certificate as proposed by the promoters:
 - (b) An estimate of the expense of the construction of the proposed new railway or work, (if any,) signed by the person making the estimate.

Plans, Sections, &c.

3. Maps, plans, sections, and books of reference deposited by the promoters are to be such, in respect of scale and contents and otherwise, as, under the standing orders of either House of Parliament for the time being in force, they would be obliged to deposit if they were proceeding in the same case by a railway bill.

4. The maps, plans, sections, and books of reference aforesaid are to be deposited at the office of the Board of Trade at the time when the memorial is lodged there.

5. They are also to be deposited for public inspection at the same offices of the clerks of the peace or sheriff-clerks, at which, under the standing orders aforesaid, the promoters would be obliged to deposit them if they were proceeding in the same case by a railway bill.

6. Where any part of the railway will be situate within the limits of the metropolis, as defined by the Metropolis Management Act, 1855, a copy of so much of the plans and sections as relates to that part is to be deposited at the office of the Metropolitan Board of Works.

7. A copy of so much of the plans and sections as relates to each parish in which any part of the railway will be situate, or in which any lands intended to be taken for the railway are situate, together with a copy of so much of the book of reference as relates to that parish, is to be deposited for public inspection with the officer or person with whom, under the standing orders aforesaid, the promoters would be obliged to deposit the same if they were proceeding in the same case by a railway bill.

* The Acts marked with an asterisk will be found in the Appendix in their chronological order.

Advertisements as to Application.

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c. 121.

8. After all the deposits aforesaid have been made, notice of the application to the Board of Trade is to be given by advertisement published as follows; namely,

Where the railway will be situate wholly in one county, city, or town, or county of a city or town, then once in each of three successive weeks in some one and the same newspaper of that county, city, or town, or county of a city or town:

Where the railway will not be situate wholly in one county, city, or town, or county of a city or town, then once in each of three successive weeks in some one and the same newspaper of the county, city, or town, or county of a city or town, wherein the head office of the promoters is situate, and also once in each of three successive weeks in some one and the same newspaper of each county, city, or town, or county of a city or town, wherein any part of the railway will be situate:

If in any case there is not any such newspaper as hereinbefore described, then in like manner in a newspaper of some adjoining or neighbouring county:

In every case, once at least in the *London, Edinburgh, or Dublin Gazette*, respectively, if the railway will be situate wholly in England or Scotland, or in Ireland: and both in the *London* and in the *Edinburgh Gazette*, if the railway will be situate partly in England and partly in Scotland.

9. The advertisements are to be published either in the month of June or in the month of November, and not at any other time.

10. Each advertisement is to give the address of an office in London where copies of the draft certificate will be supplied as hereinafter directed.

11. Each advertisement is to state that all persons desirous of making any representation to the Board of Trade, or of bringing before them any objection, respecting the application, may do so by letter addressed to the secretary of the Board of Trade, on or before the first day of August or first day of January next succeeding the date of the advertisement, according as the same is published in the month of June or in the month of November.

Deposit of Copies of Advertisements.

12. Within one week after the publication of the latest advertisement, a copy of each of the newspapers and Gazettes containing the several advertisements is to be lodged at the office of the Board of Trade.

13. Within the same time, a printed copy of the *Gazette* advertisement is to be deposited for public inspection in each of the same offices, and with each of the same officers and persons, in which or with whom the maps, plans, sections, and books of reference or parts thereof were deposited.

14. The last-mentioned deposit of a copy of the *Gazette* advertisement may be made (if the promoters choose) by means of a registered post letter, and any deposit so made shall be deemed made on the day on which such letter would be delivered in ordinary course of post.

Note of Time of Deposit.

15. Where any document is deposited under these rules for public inspection, the clerk of the peace, sheriff-clerk, or other officer or person, in whose office or with whom it is deposited, is to make thereon a memorial in writing denoting the time at which it was deposited.

Notice to Road Trustees.

16. Where any part of a turnpike road or public highway is intended to

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c. 121.

be taken or used, or to be diverted or otherwise interfered with, for the purposes of the railway, the promoters in the month of June or November (as the case may be) in which the advertisements are published, are to serve notice of the application on the trustees or other persons having the management of such road or highway.

Notice of Opposition.

17. Notice of opposition by a railway or canal company is to be lodged at the office of the Board of Trade, not later than the first day of August or first day of January next succeeding the date of the advertisement of application, according as the same is published in the month of June or in the month of November.

Notice of Settlement of Draft Certificate.

18. On the draft certificate being settled by the Board of Trade, the promoters are to serve a copy thereof, with a notice that the draft has been settled by the Board of Trade, on every company, body, or person, by whom any representation or objection respecting the application was made to or brought before the Board of Trade, and are also to give by advertisement or otherwise such public or other notice (if any) thereof, as according to the circumstances of the case the Board of Trade direct.

Supply of Copies of Draft Certificate.

19. From the time of the publication of the first advertisement the promoters are to keep in the office mentioned in this behalf in the advertisement, a sufficient number of copies of the draft of the certificate as proposed by them, and are to furnish there copies to all persons applying for them at the price of not more than sixpence each.

20. From the time of the settlement of the draft certificate by the Board of Trade, the promoters are to keep in the office aforesaid copies of the draft supplied to them for that purpose by the Board of Trade, and are to furnish there copies thereof to all persons applying for them at such price (if any) as the Board of Trade from time to time direct.

Deposit of Money.

21. The deposit of money or government securities in court is to be made within one month after notice from the Board of Trade that they are prepared to issue the certificate.

Printing of Certificate.

22. Copies of the certificate printed by the printers of a *Gazette* are to be printed on ordinary white folio paper, similar in size to the paper on which the public general acts of Parliament are printed for public sale.

28 VICT. c. 27.

28 VICT. c. 27

An Act for Awarding Costs in certain cases of Private Bills.—*
[26th May 1865.]

WHEREAS it is expedient to empower committees of both Houses of Parliament on private bills to award costs in certain cases: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. When the committee on a private bill shall decide that the preamble is not proved, or shall insert in such bill any provision for the protection of any petitioner, or strike out or alter any provision of such bill for the protection of such petitioner, and further unanimously report, with respect to any or all of the petitioners against the bill, that such petitioner or petitioners has or have been unreasonably or vexatiously subjected to expense in defending his or their rights proposed to be interfered with by the bill, such petitioner or petitioners shall be entitled to recover from the promoters of such bill his or their costs in relation thereto, or such portion thereof as the committee may think fit, such costs to be taxed by the taxing-officer of the House as hereinafter mentioned, or the committee may award such a sum for costs as they shall think fit, with the consent of the parties affected.

When committee report "preamble not proved," opponents to be entitled to recover costs.

II. When the committee on a private bill shall decide that the preamble is proved, and further unanimously report that the promoters of the bill have been vexatiously subjected to expense in the promotion of the said bill by the opposition of any petitioner or petitioners against the same, then the promoters shall be entitled to recover from the petitioners, or such of them as the committee shall think fit, such portion of their costs of the promotion of the bill as the committee may think fit, such costs to be taxed by the taxing-officer of the House as hereinafter mentioned, or such a sum for costs as the committee shall name, with the consent of the parties affected; and in their report to the House the committee shall state what portion of the costs, or what sum for costs, they shall so think fit to award, together with the names of the parties liable to pay the same and the names of the parties entitled to receive the same: Provided always, that no landowner who *bonâ fide* at his own sole risk and charge opposes a bill which proposes to

When committee report unanimously "opposition unfounded," promoters to be entitled to recover costs.

Provido.

* See pp. lvi.-lxviii. *ante*.

28 VICT. c. 27. take any portion of the said petitioner's property for the purposes of the bill shall be liable to any costs in respect of his opposition to such bill.

Costs to be
taxed.

III. On application made to the taxing-officer of the House by such promoters or petitioners, or by their solicitors or parliamentary agents, not later than six calendar months after the report of such committee, and in cases where no sum shall have been named by the committee, with the consent of the parties affected, not until one month after a bill of such costs shall have been delivered to the party chargeable therewith, which bill shall be sealed with the seal or subscribed with the proper hand of the parties claiming such costs, or of their solicitor or parliamentary agent, the taxing-officer shall examine and tax such costs, and shall deliver to the parties affected, or either or any of them, on application, a certificate signed by himself expressing the amount of such costs, or in cases where a sum for costs shall have been named by the committee, with the consent as aforesaid, such sum as shall have been so named, with the name of the party liable to pay the same, and the name of the party entitled to receive the same, and such certificate shall be conclusive evidence as well of the amount of the demand as of the title of the party therein named to recover the same from the party therein stated to be liable to the payment thereof; and the party claiming under the same shall, upon payment thereof, give a receipt at the foot of such certificate, which shall be a sufficient discharge for the same.

Powers of taxing-
officer.

IV. All powers given to the taxing-officer by the acts ten and eleven Victoria, chapter sixty-nine, and twelve and thirteen Victoria, chapter seventy-eight (*a*), with reference to the examination of parties and witnesses on oath, and with reference to the production of documents, and with reference to the fees payable in respect of any taxation, shall be vested in the taxing-officer for the purposes of this act.

(*a*) See the provisions of these acts in the Appendix, *ante*.

Recovery of costs
when taxed.

V. The party entitled to such taxed costs, or such sum named by the committee, with such consent as aforesaid, or his executors or administrators, may demand the whole amount thereof, so certified as above, from any one or more of the persons liable to the payment thereof, and in case of non-payment thereof on demand may recover the same by action of debt in any of Her Majesty's Courts of Record at Westminster or Dublin, or by action in the Court of Session in Scotland. In such action it shall be sufficient, in *England* or *Ireland*, for the plaintiff to declare that the defendant is indebted to him in the

Certificate—Costs where “Preamble not Proved,” ccix

sum mentioned in the said certificate; and the said plaintiff shall, upon filing the said declaration, together with the said certificate and an affidavit of such demand as aforesaid, be at liberty to sign judgment as for want of plea by *nil dicit*, and take out execution for the said sum so mentioned in the said certificate, together with the costs of the said action, according to due course of law: Provided always that the validity of such certificate shall not be called in question in any court (a).

(a) Where a certificate of costs had been obtained from the taxing officer, certifying that two promoters of a private bill were the parties to pay a sum of costs, and the taxation of such costs had been made in the absence of, and without notice having been given to one of such promoters, the certificate being regular in point of form, and consequently not assailable at common law, it was held that it was a fraud upon the plaintiffs for the defendants to arm themselves with an instrument obtained in the manner mentioned above; and acting upon the principles of jurisdiction exercised by the Court of Chancery, in cases of judgments obtained by fraud, that the defendants ought to be restrained from proceeding by action on the faith of the certificate: (*Swansea Canal Proprietors v. Great Western Railway Company*, L. R. 5 Eq. 444; 37 L. J. (Ch.) 233; 16 W. R. 1034; 18 L. T. N. S. 78.)

VI. In such action it shall be sufficient, in *Scotland*, for the pursuer to allege that the defender is indebted to him in the sum mentioned in the said certificate, under the like proviso in regard to the validity of the certificate.

VII. In every case it shall be lawful for any person from whom the amount of such costs or sum named by the committee, with consent as aforesaid, has been so recovered, to recover from the other persons, or any of them, who are liable to the payment of such costs or sum named by the committee, with consent as aforesaid, a proportionate share thereof, according to the number of persons so liable, and according to the extent of the liability of each person.

VIII. In any case in which the committee shall have reported that the preamble is not proved, and where, in accordance with the standing orders of either House of Parliament and of an act of the ninth year of her present Majesty, chapter twenty, a deposit of money or stock is made with respect to the application to Parliament for an act, the money or stock so deposited shall be a security for the payment by the promoters of the bill for the act of all costs or sums in respect of costs, if any, payable by them under this act; and every party entitled to receive any costs or sum so payable shall accordingly have a lien available in equity for the same on the money or stock so deposited, and the lien shall attach thereon at the

23 VICT. c. 27. time when the bill is first referred to a committee of either House of Parliament; provided that where several parties have the lien for an amount exceeding in the aggregate the net value of the money or stock, their respective claims shall proportionately abate.

Definition of promoters.

IX. When a bill is not promoted by a company already formed, all persons whose names shall appear in such bill as promoting the same, and in the event of the bill passing the company thereby incorporated, shall be deemed to be promoters of such bill for all the purposes of this act.

Meaning of private bill.

X. For the purposes of this act the expression private bill shall extend to and include any bill for a local and personal act.

Commencement of act.

XI. That this act shall not take effect before the first day of November one thousand eight hundred and sixty-five.

CARRIAGE AND DEPOSIT OF DANGEROUS GOODS ACT, 1866.*

(29 & 30 VICT. c. 69.)

An Act for the Amendment of the Law with respect to the Carriage and Deposit of dangerous Goods.—[6th August 1866.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Nitro-glycerine to be deemed dangerous.

I. The goods or article commonly known as nitro-glycerine or glonoine oil shall be deemed to be specially dangerous within the meaning of this act.

Other goods may be declared so by Order in Council.

II. Her Majesty may from time to time, by Order in Council, declare that any goods named in any such order (other than nitro-glycerine or glonoine oil) are to be deemed specially dangerous within the meaning of this act; and may from time to time amend or repeal any such order; and any goods which are by any such order declared to be specially dangerous shall, so

* See s. 105 of the Railways Clauses Act, 1845, *ante*, p. 432.

Dangerous Goods—Forfeiture—Warehousing. ccxi

long as such order is in force, be deemed to be specially dangerous within the meaning of this act. 29 & 30 Vict.
c. 69.

III. No person shall deliver any goods which are specially dangerous to any warehouse owner or carrier, or send or carry or cause to be sent or carried any such goods upon any railway or in any ship to or from any part of the United Kingdom, or in any other public conveyance, or deposit any such goods in or on any warehouse or quay, unless the true name or description of such goods, with the addition of the words specially dangerous, is distinctly written, printed, or marked on the outside of the package, nor in the case of delivery to or deposit with any warehouse owner or carrier, without also giving notice in writing to him of the name or description of such goods, and of their being specially dangerous. And any person who commits a breach of this enactment shall be liable to a penalty not exceeding five hundred pounds, or at the discretion of the court to imprisonment, with or without hard labour, for any term not exceeding two years.

Such goods to be marked, and notice to be given of their character.

IV. Provided always as follows :

- (1.) Any person convicted of a breach of the last foregoing enactment shall not be liable to imprisonment, or to a penalty of more than two hundred pounds, if he shows to the satisfaction of the court and jury before whom he is convicted that he did not know the nature of the goods to which the indictment relates :
- (2.) Any person accused of having committed a breach of the said enactment shall not be liable to be convicted thereof if he shows to the satisfaction of the court and jury before whom he is tried that he did not know the nature of the goods to which the indictment relates, and that he could not, with reasonable diligence, have obtained such knowledge.

Provision for case of absence of knowledge of nature of goods.

V. Where goods are delivered, sent, carried, or deposited in contravention of the said enactment, the same shall be forfeited, and shall be disposed of in such manner as the Commissioners of Her Majesty's Treasury or (in case of importation) the Commissioners of Customs direct, whether any person is liable to be convicted of a breach of the said enactment or not.

As to forfeiture of such goods.

VI. No warehouse owner or carrier shall be bound to receive or carry any goods which are specially dangerous.

Warehouse owners, &c., not bound to receive such goods.

29 & 30 Vict.
c. 69.

Interpretation
of "owner" and
"carrier."

VII. In construing this act the term warehouse owner shall include all persons or bodies of persons owning or managing any warehouse, store, quay, or other premises in which goods are deposited; and the word carrier shall include all persons or bodies of persons carrying goods or passengers for hire by land or water.

Application of 25
& 26 Vict. cap.
66, to nitro-
glycerine.

VIII. The act of the session of the twenty-fifth and twenty-sixth years of Her Majesty's reign, chapter sixty-six, "for the safe keeping of petroleum," is hereby extended and applied to nitro-glycerine, and that act shall be read and have effect as if throughout its provisions nitro-glycerine had been mentioned in addition to petroleum; save that so much of the said act as specifies the maximum quantity of petroleum to be kept as therein mentioned without a license shall not apply in the case of nitro-glycerine, and any quantity whatever of nitro-glycerine shall be deemed to be subject to the provisions of the said act.

Application of
the same act to
other substances.

IX. The said act of the session of the twenty-fifth and twenty-sixth years of Her Majesty's reign is also hereby extended and applied to any substance for the time being declared by any Order in Council under this act to be specially dangerous, and that act shall be read and have effect as if throughout its provisions the substance to which such Order in Council relates had been mentioned in addition to petroleum; save that the quantity of such substance which it shall not be lawful to keep as in the said act mentioned without a license shall, instead of the quantity specified in relation to petroleum in the said act, be such quantity as is specified in that behalf in relation to any such substance in any such Order in Council.

Short title.

X. This act may be cited as "The Carriage and Deposit of Dangerous Goods Act, 1866."

RAILWAY COMPANIES SECURITIES ACT, 1866.

(29 & 30 VICT. c. 108).

An Act to Amend the Law relating to Securities issued by Railway Companies.—[10th August 1866.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal,

and Commons, in this present Parliament assembled, and by the authority of the same, as follows: 29 & 30 Vict.
c. 108.

I. This Act may be cited as "The Railway Companies Securities Act, 1866." Short Title.

II. In this Act—

The term "railway" includes a tramway authorised by act of Parliament incorporating The Companies Clauses Consolidation Act, 1845, but not any other tramway:

Interpretation of terms.

The term "railway company" includes every company authorised by act of Parliament to raise any loan capital for the construction or working of a railway, or for any purposes connected with the conveyance by such company of traffic on a railway, either alone or in conjunction with other purposes:

The term "debenture stock" includes mortgage preference stock and funded debt, and any stock or shares representing loan capital of a railway company, by whatever name called:

The term "Act of Parliament" includes a certificate of the Board of Trade made under The Railways Construction Facilities Act, 1864 or The Railway Companies' Powers Act, 1864, or any other act of Parliament. 27 & 28 Vict.
cc. 120, 121.

III. Every railway company shall, on or before the fifteenth day of January one thousand eight hundred and sixty-seven, register, and shall always thereafter keep registered, at the office of the Registrar of Joint Stock Companies in England, the names of their secretary, accountant, treasurer, or chief cashier for the time being authorised by them to sign instruments under this act, or if they think fit, the names of two or more such officers of the company so authorised, (and the officer so registered for the time being, and any one of the officers so registered, if more than one, is in this act referred to as the company's registered officer.) Company to have registered officer.

IV. Half-years shall, for the purposes of this act be deemed to end on the thirtieth day of June and the thirty-first day of December: and the first half-year to which this act applies shall be that ending on the thirty-first day of December one thousand eight hundred and sixty-six; but the Board of Trade, on the application of any railway company, may (by writing under the hand of one of their secretaries or assistant secretaries, which shall be registered by the railway company at the office of the said registrar) appoint, with respect to that company, other days for the ending of half-years, (including the first.) Half-years for purposes of act.

29 & 30 Vict.
c. 108.

Loan capital ac-
counts to be
made half-yearly.

V. Within fourteen days after the end of each half-year every railway company shall make an account (a) of their loan capital authorised to be raised and actually raised up to the end of that half-year, specifying the particulars described in the first schedule to this act, part i., (which account for each half-year is in this act referred to as the loan capital half-yearly account.)

(a) As to the mode of keeping accounts of railway companies see s. 115 of the Companies Act, 1845, *ante*, p. 104, *et seq.*, and the Railway Companies Act, 1867, *ante*.

Form of half-
yearly account.

VI. The Board of Trade may from time to time, by notice published in the *London, Edinburgh, and Dublin Gazette*, prescribe the form in which the loan capital half-yearly account is to be made.

Account to be
open to share-
holders, &c.

VII. The loan capital half-yearly account of each company may be perused at all reasonable times, without payment, by any shareholder, stockholder, mortgagee, bond creditor, or holder of debenture stock of the company, or any person interested in any mortgage, bond, or debenture stock of the company.

Deposit of copy
of account with
Registrar of
Joint Stock
Companies.

VIII. Within twenty-one days after the end of each half-year every railway company shall deposit with the Registrar of Joint Stock Companies in *England* a copy, certified and signed by the company's registered officer as a true copy, of their loan capital half-yearly account.

Deposit in Scot-
land and Ireland.

IX. A railway company may also, if they think fit, deposit with the Registrar of Joint Stock Companies in *Scotland*, or with the Assistant-Registrar of Joint Stock Companies in *Ireland*, or with each, a like copy of any loan capital half-yearly account of the company.

Prohibition
against borrow-
ing before regis-
tration of act
giving the bor-
rowing power.

X. It shall not be lawful for any railway company at any time to borrow any money on mortgage or bond, or to issue any debenture stock, under any act of the present session or passed after the end of the half-year to which their then last registered loan capital half-yearly account relates, unless and until they have first deposited with the Registrar of Joint Stock Companies in *England* a statement, certified and signed by the company's registered officer as a true statement, specifying the particulars described in the first schedule to this act, part ii.

The Board of Trade may from time to time, by notice published in the *London, Edinburgh, and Dublin Gazette*, prescribe the form in which such statement is to be made.

Declaration as to Mortgages and Bonds. ccxv

A railway company may also, if they think fit, deposit with the Registrar of Joint Stock Companies in *Scotland*, or with the Assistant-Registrar of Joint Stock Companies in *Ireland*, or with each, a like copy of any such statement.

29 & 30 Vict.
c. 188.

XI. If at any time any railway company fail to register or keep registered as aforesaid the name of their secretary, accountant, treasurer, or chief cashier, or to deposit with the Registrar of Joint Stock Companies in *England*, within the time required by this act, such a copy as aforesaid of any loan capital half-yearly account, or borrow any money on mortgage or bond, or issue any debenture stock, without having first deposited with the Registrar of Joint Stock Companies in *England* such a statement as they are by this act required to deposit, in any case where they are so required, then and in every such case they shall be deemed guilty of an offence against this act, and shall for every such offence be liable, on summary conviction, to a penalty not exceeding twenty pounds, and in case of a continuing offence to a further penalty not exceeding five pounds for every day during which the same continues after the day on which the first penalty is incurred.

Penalty on company failing to register, &c.

XII. Every person may inspect the documents kept by any registrar or assistant-registrar under this act on paying a fee of one shilling for each inspection as regards each railway company; and any person may require a copy or extract of any of those documents to be certified by the registrar or assistant-registrar on paying for such certified copy or extract a fee of sixpence, and a further fee of sixpence for every two hundred words, or fractional part of two hundred words, after the first two hundred words.

Power to inspect documents on payment of a fee.

XIII. Every railway company on registering the name or names of any officer or officers, or depositing any account or statement, under this act, shall pay the like fee as is for the time being payable under The Companies Act, 1862, on registration of any document other than a memorandum of association.

Fees on registration of name of officer, &c.

XIV. There shall be put (by indorsement or otherwise) on every mortgage deed or bond made or given after the twenty-first day of January one thousand eight hundred and sixty-seven by a railway company for securing money borrowed by the company, and on every certificate given after that day by a railway company for any sum of debenture stock issued by the company, a declaration in the form given in the second schedule

Declaration by directors, &c., on mortgage deeds, &c.

29 & 30 Vict.
c. 108.

to this act, or to the like effect, with such variations as circumstances require.

Every such declaration shall be signed by two directors of the company specially authorised and appointed by the board of directors to sign such declarations, and by the company's registered officer.

Penalty on company, &c., if declaration omitted.

XV. If after the expiration of the time specified in the last preceding section any railway company deliver any such mortgage deed, bond, or certificate without such a declaration being first put thereon and signed as aforesaid, they shall be deemed guilty of an offence against this act, and shall for every such offence be liable, on summary conviction, to a penalty not exceeding twenty pounds; and if any director or officer of any railway company knowingly authorises or permits the delivery of any such mortgage deed, bond, or certificate without such a declaration being first put thereon and signed as aforesaid, every such person shall be deemed guilty of an offence against this act.

Penalty on registered officer.

XVI. If any director or registered officer of a company signs any declaration, account, or statement under this act, knowing the same to be false in any particular, he shall be deemed guilty of an offence against this act.

Punishment for offences against act.

XVII. If any director or officer of a railway company is guilty of an offence against this act, he shall be liable, on conviction thereof on indictment, to fine or imprisonment, or on summary conviction thereof to a penalty not exceeding ten pounds.

Nothing to affect liability of company, &c.

XVIII. Nothing in this act, or in any account, statement, or declaration under it, shall affect in any action or suit any question respecting any loan, debt, liability, mortgage, bond, or debenture stock as between a railway company or any director or officer of a railway company on the one side, and any person or class of persons on the other side.

Account, &c., not to be evidence for company.

XIX. An account, statement, or declaration under this act shall not be admissible as evidence in favour of a railway company of the truth of any matter therein stated.

SCHEDULES.

29 & 30 VICT.
c. 108.

THE FIRST SCHEDULE.

PART I.

Particulars to be specified in Loan Capital Half-yearly Account.

A. Every half-yearly account to show—

- (1.) The act or acts of Parliament under the powers of which the company have contracted any mortgage or bond debt existing at the end of the half-year, or have issued any debenture stock then existing, or the act or acts of Parliament by or under which any mortgage or bond debt or debenture stock of the company then existing has been confirmed, and the act or acts of Parliament under which the company have any subsisting power to contract any mortgage or bond debt, or to issue any debenture stock, (either on fulfilment of any condition or otherwise :)
- (2.) The amount or respective amounts of mortgage or bond debt or debenture stock thereby authorised or confirmed:
- (3.) Whether or not by any such act or acts the obtaining of the certificate of a justice or sheriff for any purpose, or the obtaining of the assent of a meeting of the company, has been made a condition precedent to the exercise of the power thereby conferred of borrowing on mortgage or bond, or of creating and issuing debenture stock.
- (4.) The date at which such condition has been fulfilled:
- (5.) The amount or the aggregate amount, under the powers of such act or acts, actually borrowed up to the end of the half-year on mortgage or bond, (distinguishing them,) and then being an existing debt, and of debenture stock actually issued up to that time and then existing:
- (6.) The amount or the aggregate amount remaining to be borrowed.

B. The second and every subsequent half-yearly account to show also—

- (7.) The items described in paragraphs (2.) and (5.) of this part of the present schedule for two consecutive half-years, and the increase or decrease of any of those items in the second of those half-years as compared with the first.

PART II.

Particulars to be specified in Statement as to new Borrowing Power.

- (1.) The act of Parliament conferring the power to borrow on mortgage or bond or to issue debenture stock, (either on fulfilment of any condition or otherwise :)
- (2.) The amount of mortgage or bond debt or debenture stock thereby authorised:
- (3.) Whether or not by such act the obtaining of the certificate of a justice or sheriff for any purpose, or the obtaining of the assent of a meeting of the company, has been made a condition precedent to the exercise of the power thereby conferred of borrowing on mortgage or bond, or of creating and issuing debenture stock:
- (4.) The date at which such condition has been fulfilled.

29 & 30 VICT.
c. 108.

THE SECOND SCHEDULE.

Declaration on Mortgage Deed, Bond, or Certificate of Debenture Stock.

The _____ Railway Company.

We, the undersigned, being two of the directors of the company specially authorised and appointed for this purpose, and I, the undersigned registered officer of the company, do hereby declare (each for himself) that the within written [*or as the case may be*] mortgage deed [*or bond or certificate*] is issued under the borrowing powers of the company as registered* on the _____ day of _____, and is † not in excess of the amount there stated as remaining to be borrowed.

Dated this _____ day of _____ 18 .

_____	}	Directors.

_____	}	Secretary or accountant, [<i>or as the case may be,</i>] and registered officer.

Note.—Where the case so requires with reference to a statement under the first schedule, part ii., leave out from the* to the end of the form and insert:—on the _____ day of _____ and the _____ day of _____ and is not in excess of the amounts there stated as remaining and authorised to be borrowed.

Where the mortgage deed, bond, or certificate is issued under a power of borrowing, or of issuing debenture stock in discharge of mortgage or bond debt, leave out from the † to the end of the form, and insert:—in substitution for a mortgage deed [*or bond*] which has since been paid off.

THE RAILWAYS (EXTENSION OF TIME) ACT, 1868.

(31 VICT. C. 18.)

An Act to give further Time for making certain Railways.—
[29th May 1868.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

I. This act may be cited as "The Railways (Extension of Time) Act, 1868."

Interpretation of
terms.

II. In this act—

The term "company" means a railway company; that is to say, a company constituted by act of Parliament, or by certificate under act of Parliament, for the purpose of constructing, maintaining, or working a railway, (either alone or in conjunction with any other purpose:)

The term "railway" includes "tramway:."

The term "share" includes "stock:"

31 VICT. c. 18.

The term "Gazette" means, with respect to a railway or works or lands in *England*, the *London Gazette*; with respect to a railway or works or lands in *Scotland*, the *Edinburgh Gazette*; and with respect to a railway or works or lands in *Ireland*, the *Dublin Gazette*.

III. Where it is desired that the time limited for the completion by a company of a railway or part of a railway, or of a work, or for the purchase by them of lands for the purpose thereof, be extended, then, subject and according to the provisions of this act, within one year after the passing of this act, an application for that purpose may be made to the Board of Trade by or on behalf of the company.

Power for company to apply to Board of Trade for extension of time.

IV. An application under this act shall not be entertained by the Board of Trade unless it is made with the assent of three-fifths in value of the votes of the holders of the shares in the subscribed capital of the company, recorded at an extraordinary meeting of the company convened for the purpose.

Application only with assent of shareholders.

V. Where a meeting is called for the purposes of this act, the secretary of the company shall, seven clear days at least before the day appointed for the meeting, send by post to each registered shareholder, to his registered or known address, a circular, which shall be in the form given in the schedule to this act, with such variations as circumstances require, and with such modifications (if any) as the Board of Trade approve.

Circular to shareholders.

VI. Each shareholder may signify his assent to or dissent from the proposed application in the manner indicated in the circular sent.

Mode of signification of assent or dissent.

VII. At the meeting the shareholders personally present shall elect three shareholders to be scrutineers.

Meeting to elect scrutineers.

VIII. The scrutineers shall ascertain and record the proportion of capital held by shareholders assenting, and shall report it to the chairman, who shall announce it to the meeting, and state whether the proposed application is assented to by the requisite proportion or not.

Ascertainment of assents or dissents.

IX. In the computation of assents a share shall not be reckoned unless the holder thereof is duly registered, and has paid on all shares held by him all calls due by him made three months or upwards before the day of the meeting or of the pre-

What shares only to be reckoned.

31 *Vict. c. 18.* — sentation to the directors of the requisition (if any) on which the meeting is held.

Adjournment on application of scrutineers.

X. For the purpose of receiving the report of the scrutineers, the chairman may, if he thinks fit, on the application of any one of the scrutineers, and shall, if required by more than one of them, adjourn the meeting to a day appointed by him, being not less than one or more than seven clear days from the day of the meeting.

Decision of scrutineers final.

XI. The decision of the scrutineers, or any two of them, on any matter to be decided by them under this act, shall be final.

Notice of application in *Gazette*, &c.

XII. When an application has been made to the Board of Trade in accordance with this act, then, if it appears to them that there are sufficient grounds for entertaining the application, they shall direct notice of the fact that the application has been made to be given, by or on behalf of the company, by advertisement (in a form approved by the Board of Trade) once in the *Gazette* and once in each of three successive weeks in a newspaper published or circulating in each of the counties in which any portion of the railway, part of a railway, works or lands to which the application relates is situate, and by bills affixed, on three successive Sundays, on the principal outer door of the church or churches in every parish in which any portion of the railway, part of a railway, works or lands is situate; and every such notice shall state when and how any person, company, or corporation objecting to the application may bring his objection before the Board of Trade.

Extension of time by warrant of Board of Trade.

XIII. The Board of Trade, on proof to their satisfaction that notice has been duly given, and on the expiration of the time allowed for objections, and after considering the objections, (if any,) may, if they think fit, by warrant, (signed by their secretary or one of their assistant secretaries,) according to the nature of the application made to them, and on such terms and conditions (if any) as they think fit, extend the time limited for the completion of the railway, or of any part thereof, or of any works, or may (with or without extension of the time aforesaid) extend the time limited for the purchase of any lands for the purpose of the railway, or of any part thereof, or of any works, for such time in each case as they think fit, not exceeding in any case two years from the expiration of the respective time limited; and every such warrant shall have effect as if the provisions thereof had been enacted by Parliament: provided that no such

Extension of Time—Warrant—Compensation. ccxxi

warrant shall be granted unless the Board of Trade, having ascertained the state and condition of the company in the manner provided in the fourteenth section of the Abandonment of Railway Act, 1850, see reason to believe that the company will be able to complete the railway, part of a railway, or works within the extended time named in the warrant, for which purpose the Board of Trade shall have all the powers of that section, and the provisions of that section shall extend and apply to the case of proceedings under this act.

21 Vict. c. 18.

XIV. Within one month after the warrant is issued by the Board of Trade they shall give notice thereof in the *Gazette*.

Notice of
warrant in
Gazette.

XV. Justices, arbitrators, umpires, and juries, in estimating the compensation to be made by the company to the owners or occupiers of or persons interested in lands, shall have regard to and make compensation (a) for the additional damage (if any) sustained by those owners, occupiers, or persons by reason of any extension of time under this act.

Compensation
or extension of
time.

(a) See the notes to s. 68 of the Lands Clauses Act, 1845, *ante*, p. 196, and to s. 123, *ante*, p. 287.

XVI. Where before the passing of this act, a contract has been entered into by a company, for the taking of lands for their railway or works, this act shall not authorise, as regards those lands, any extension of the time limited for the purchase of lands; and every such contract shall continue to have effect as if this act had not been passed.

Saving for
contracts and
notices before
act.

THE SCHEDULE.

Form of Circular and of Assent or Dissent.

The Railways (Extension of Time) Act, 1868.

The Company.

An extraordinary meeting of the shareholders of this company will be held at _____ on the _____ day of _____ at _____ o'clock, for the purpose of determining whether or not an application shall be made to the Board of Trade, under the above-mentioned act, for an extension of the time limited by [state the act or acts limiting the time proposed to be extended] for [state the matter to which the limitation relates].

You are requested to signify your assent to or dissent from the proposed application by writing in the fourth column of the following table the word *assenting* or *dissenting*, as the case may be, and signing your name there-

31 Vict. c. 18

under, and by returning this circular, so filled up and signed, to me, so that I shall receive the same on or before the day next preceding the day of the meeting, but if your assent or dissent is not received at latest on the day next preceding the day of the meeting it will not be computed.

Name of Railway.	Name of Shareholder.	£ Amount of Share Capital held by him.	Whether assenting or dissenting.
*	*	*	†
			(Signed)

* The secretary will insert these particulars.

† In this column the shareholder will write the word *assenting* or *dissenting*, as the case may be, and sign his name thereunder.

(Signed)

Secretary.

COMMONS' STANDING ORDERS,* 1867-68.

1.—APPOINTMENT OF COMMITTEES AND EXAMINERS OF PETITIONS FOR PRIVATE BILLS.

Examiners of petitions.

1. There shall be one or more officers of this House, to be called "The Examiners of Petitions for Private Bills," who shall be appointed by Mr Speaker (a).

(a) In the House of Lords the examiners are appointed by the House: (L. S. O. xciii. 1.)

Committee on Standing Orders.

2. There shall be a committee, to be designated "The Select Committee on Standing Orders," to consist of eleven members,

* The Lords' standing orders have not been printed *in extenso*, but are referred to after each corresponding section of the Commons' orders, and such of them only as relate exclusively to proceedings in the House of Lords are set out at length, and marked with Roman numerals.

Committees—Two Classes of Private Bills. ccxxiii

who shall be nominated at the commencement of every session of whom five (a) shall be a quorum.

STANDING
ORDERS.

(a) Three Lords, including the chairman, are a quorum : (L. S. O. clxxvii. 2.)

3. There shall be a committee, to be designated "The Committee of Selection," to consist of the chairman of the select committee on standing orders, who shall be *ex officio* chairman thereof, and five other members, who shall be nominated at the commencement of every session, of which committee three shall be a quorum.

Committee of
Selection.

4. There shall be a committee to be designated "The General Committee on Railway and Canal Bills," which shall be nominated at the commencement of every session by the committee of selection, of which committee three shall be a quorum.

General Com-
mittee on Rail-
way and Canal
Bills.

5. The Committee of Selection may, from time to time, discharge members from further attendance on such general committee, and add other members in their room, and shall appoint the chairman of such committee.

Committee of
Selection may
discharge mem-
bers and add
others.

6. The General Committee on Railway and Canal Bills shall appoint from among themselves the chairman of each committee on a railway or canal bill, or on a group of such bills, and may change the chairman so appointed from time to time.

General Com-
mittee to appoint
chairman.

7. The committee on every opposed railway and canal bill, or group of railway and canal bills, shall be composed of four (a) members and a referee, or four members not locally or otherwise interested in the bill or bills referred to them; the chairman to be appointed by the General Committee on Railway and Canal Bills, and three other members by the Committee of Selection. (See also No. 103.)

Committees on
railway and
canal bills.

(a) Five in the House of Lords : (L. S. O. clxxviii. 11.)

II.—THE TWO CLASSES OF PRIVATE BILLS.

11. For the purposes of the standing orders of this House, all private bills to which the standing orders are applicable shall be divided into the two following classes, according to the subjects to which they respectively relate :—

Private bills
divided into two
classes.

1st Class :

1st class.

Various subjects, such as making burial-grounds, inclosures, gaols, rates, &c., and continuing or amending an act passed for any of the purposes included in this

STANDING
ORDERS.

or the second class, where no further work than such as was authorised by a former act is proposed to be made.

2d class.

2d Class :

Making, maintaining, varying, extending, or enlarging any	
Aqueduct.	Ferry, where any work is to be executed.
Archway.	Harbour.
Bridge.	Navigation.
Canal.	Pier.
Cut.	Port.
Dock.	Railway.
Drainage — making and	Reservoir.
maintaining any cut for	Sewer.
drainage, being a new	Street.
work, where it is not	Street tramway.
provided in the bill that	Tunnel.
the same shall not be	Turnpike or other public car-
more than eleven feet	riage road.
width at the bottom.	Waterwork.
Embankment for reclaim-	(L. S. O. clxxviii. 19.)
ing land from the sea or	
any tidal river.	

Bills brought
from House of
Commons.

CLXXIX. (1.) That with respect to bills brought from the House of Commons, and bills originating in this House, and referred to the judges, or approved by the Court of Chancery, no petition praying to be heard upon the merits against any bill in either of the classes before-mentioned shall be received by this House, unless the same be presented by being deposited in the Private Bill Office before three o'clock in the afternoon on or before the seventh day after the day on which such bill shall have been read a first time.

Reference to
examiners after
first reading.

(2.) That with respect to bills originating in this House, and included in either of the two classes of private bills in standing order No. clxxviii., such bills shall immediately after the first reading thereof be referred to the examiners, before whom the compliance with such standing orders as shall not have been previously inquired into shall be proved : The examiner shall certify whether there be any further standing orders, and, if there be any, whether they have or have not been complied with ; and when they have not been complied with, he shall certify the facts upon which his decision is founded, and any special circumstances connected with the case ; such certificate to be addressed to and deposited in the office of the Clerk of the Parliaments and no such bill shall be read a second time earlier than the

STANDING
ORDERS

fourth day nor later than the seventh day after the first reading thereof, unless the examiners shall have certified that the standing orders have not been complied with, in which case the second reading shall not be later than the second day on which the House shall sit after the report from the Standing Order Committee allowing such bill to proceed shall have been laid on the table of the House; and no petition praying to be heard upon the merits against any such bill shall be received by this House unless the same shall be presented by being deposited in the Private Bill Office before three o'clock in the afternoon on or before the seventh day after the day on which such bill shall have been read a second time.

(3.) That notice in writing shall be given to Her Majesty's Attorney-General for *England* or *Ireland*, as the case may require, of every bill relating to *England* or *Ireland*, and containing provisions whereby any special application of the property of any charity not authorised by the Lands Clauses Consolidation Act shall be directed, or the patronage or the constitution of any charity, or the right of any charity to any property, shall be affected; and no such bill shall be read a second time unless the House shall have received a report from the Attorney-General on the matters relating to such charity.

(4.) That no bill which proposes to increase the rates now payable on the conveyance of goods or passengers on any railway shall be read a second time until a report from the Board of Trade on the subject, made after the bill has been read a first time in this House, shall have been laid upon the table of the House.

(5.) That after any bill in either of the two classes before mentioned shall have been reported from any select committee to the House, the said bill shall in no case be re-committed to the same or another select committee before the third day on which the House shall sit after the day on which notice shall have been given of the motion to recommit such bill.

(6.) That the Chairman of Committees shall, in any case in which he shall think fit, propose to the House that any bill in either of the two classes before mentioned shall, after such bill has been reported, be committed to a committee of the whole House; in which case such bill, printed as reported, shall be delivered by the promoters to the Lords in the same manner as papers printed by this House are delivered, at least two days before the day for which the same is committed. In acting on this order the Chairman of Committees is to take care that no bill is allowed to proceed as a private bill because it may be committed to a committee of the whole House which would not have been allowed to proceed as such without being so committed.

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ORDERS.

(7.) That no amendment shall be moved to any such bill on the report or on the third reading, unless the same shall have been submitted to the Chairman of Committees, and printed copies thereof, in any case in which he shall not consider the amendments verbal, deposited with the Clerk of the Parliaments one clear day at least prior to the report or third reading of any bill.

III.—STANDING ORDERS, COMPLIANCE WITH WHICH IS TO BE PROVED BEFORE THE EXAMINERS OF PETITIONS FOR BILLS.

12. Compliance with the following standing orders shall be proved before one of the examiners of petitions for private bills—viz. :

1. *Notices by Advertisement.*

Notices to state objects of application, when bills will be deposited in Private Bill Office, and intention to seek for powers to purchase lands, or to amalgamate, &c., or to levy or alter tolls, to be stated.

13. In all cases where application is intended to be made for leave to bring in a bill relating to any of the subjects included in either of the two classes of private bills, notices shall be given stating the objects of such intended application, and the time at which copies of the bill will be deposited in the Private Bill Office; and if it be intended to apply for powers for the compulsory purchase of lands or houses, or for extending the time granted by any former act for that purpose, or to amalgamate with any other company, or to sell or lease the undertaking, or to purchase or take on lease the undertaking of any other company, or to amend or repeal any former act or acts, or to levy any tolls, rates, or duties, or to alter any existing tolls, rates, or duties, or to confer, vary, or extinguish any exemptions from payment of tolls, rates, or duties, or to confer, vary, or extinguish any other rights or privileges, the notices shall specify such intention; and the whole of the notice relating to the same bill shall be included in the same advertisement, which shall be headed by a short title, descriptive of the undertaking or bill, (and see order 61: L. S. O. clxxx. 1.)

In second class bills, notices to contain names of parishes, &c.

14. In cases of bills included in the second class, and of bills of the first class, in respect to which plans are required to be deposited, such notices shall also contain a description of all the termini, together with the names of the parishes, townships, townlands, and extra-parochial places from, in, through, or into which the work is intended to be made, maintained, varied, extended or enlarged, or in which any lands or houses intended

to be taken are situate, and shall state the time and place of deposit of the plans, sections, books of reference, and copies of the *Gazette* notice respectively, with the clerks of the peace, sheriff-clerks, parish clerks, clerks of vestries or district boards, schoolmasters, session clerks, town-clerks, and clerks of unions, as the case may be: (See Nos. 30, 31, 37, and 38; L. S. O. clxxx. 2.)

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16. In cases of bills for laying down any street tramway, the notices and plans shall set forth, specify, and indicate whether it is proposed to lay such tramway along the centre of any street, and if not along the centre, then on which side of, and at what distance from, an imaginary line drawn along the centre of such street. In the months of October and November or one of them, immediately preceding the application for any bill for laying down a street tramway, notice thereof shall be posted for fourteen consecutive days in the street or streets along which it is proposed to lay such tramway, in such manner as the authority having the control of such street or streets shall direct; and if after application to such authority no such direction shall be given, then in some conspicuous position in such street or streets: (L. S. O. clxxxiii. 5.)

17. In all cases where it is proposed to divert into any intended cut, canal, reservoir, aqueduct, or navigation, or into any intended variation, extension, or enlargement thereof respectively, any water from any existing cut, canal, reservoir, aqueduct, or navigation, whether directly or derivatively, and whether under any agreement with the proprietors thereof or otherwise, the notices shall contain the name of every such existing cut, canal, reservoir, aqueduct, or navigation, the waters supplying which will either directly or derivatively flow or proceed into any such intended cut, canal, reservoir, aqueduct, or navigation, or into any intended variation, extension, or enlargement thereof: (L. S. O. clxxx. 3.)

When it is intended to divert water from an existing cut, &c.

19. In the months of October and November, or either of them, immediately preceding the application for a bill, such notices shall be published once in the *London, Edinburgh, or Dublin Gazette*, as the case may be, and in three successive weeks in some one and the same newspaper of the county in which the city, county of a city, town, county of a town, or lands to which such bill relates shall be situate; or if there be no newspaper published therein; then in the newspaper of some county adjoining or near thereto; and if such bill relate specially to any particular city, county of a city, town, or county of a town, in which any newspaper is published, such notices shall be published in three successive weeks in one and the same newspaper published therein; or if such bill do not relate to any particular

Publication of notices in Gazettes and newspapers.

STANDING
ORDERS.

city, county of a city, town, county of a town or lands, such notices shall be published once in the *London, Edinburgh, or Dublin Gazette* only, as the case may be; and if such bill relate to lands situate in more than one county, such notices shall be inserted once in each of three successive weeks, in some newspaper or newspapers which shall be published in London at least six days in the week, or in Edinburgh or Dublin at least two days in the week, as the case may be, and in a newspaper of the county in which the principal office of the company or companies or other parties who are the promoters of any such bill, shall be situate, and in a newspaper of every county in which any new works are proposed to be constructed, or in which any lands are situate in respect of which any new or further powers for the completion of works already authorised are intended to be applied for: (L. S. O. clxxx. 5.)

2. *Notices and Applications to Owners, Lessees, and Occupiers of Lands and Houses.*

Applications to
owners, &c., on
or before 15th
December.

20. On or before the 15th day of December immediately preceding the application for a bill by which any lands or houses are intended to be taken, or an extension of the time granted by any former act for that purpose is sought, application in writing shall be made to the owners or reputed owners, lessees or reputed lessees, and occupiers of all lands and houses so intended to be taken, or which may be taken as being within the limits of deviation defined upon the plan; and in cases of bills included in the second class, such application shall be, as nearly as may be, in the form set forth in the Appendix marked (A.) All such notices shall be accompanied by a copy of the standing orders which regulate the time and mode of presenting petitions in opposition to bills.

How application
to be made.

21. Such application shall be made by delivering the same personally to every such party, or by leaving the same at his usual place of abode, or in his absence from the United Kingdom, with his agent, on or before the 15th day of December, or by forwarding the same by post in a registered letter, addressed with a sufficient direction to his usual place of abode, and posted on or before the 12th day of December at the chief post-office in London, Manchester, Liverpool, Birmingham, Leeds, Newcastle-upon-Tyne, Norwich, Lincoln, Shrewsbury, Bristol, Exeter, Edinburgh, Glasgow, Aberdeen, Inverness, Dublin, Belfast, Cork, or Athlone, at such hours and according to such regulations as the Postmaster-General shall from time to time appoint, for the posting and registration of such letters: (L. S. O. clxxxi. 3.)

List of Owners Assenting and Dissenting. cccxix

22. In all cases the written acknowledgment of the party applied to shall, in the absence of other proof, be sufficient evidence of an application having been made, or notice given: and in case of an application or notice having been forwarded by post, in a registered letter, the production of the post-office receipt for such letter, duly stamped, in such form as the Postmaster-General shall have appointed, shall be sufficient evidence of the due delivery of such letter: Provided it shall appear that the same was properly and sufficiently directed, and that the same was not returned by the post-office as undelivered: (L. S. O. clxxxi. 4.)

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ORDERS.

Written acknowledgment of party applied to, and in case of application or notice by post, post-office receipt sufficient evidence.

23. Separate lists shall be made of the names of such owners, lessees, and occupiers, distinguishing those who have assented, dissented, or are neuter in respect to such application, or who have returned no answer thereto; and where no written acknowledgment has been returned to an application forwarded by post, or where such application has been returned as undelivered at any time before the making up of such lists, the direction of the letter in which the same was so forwarded shall be inserted therein. (See Order 43, directing the deposit of the said lists in the Private Bill Office; L. S. O. clxxxi. 5 c.)

List of owners, &c., assenting, dissenting, and neuter.

24. On or before the fifteenth day of December immediately preceding the application for a bill, whereby it is proposed to abstract water from any stream for the purpose of supplying any cut, canal, reservoir, aqueduct, navigation, or waterwork, notice in writing of such bill shall be given to the owners or reputed owners, lessees or reputed lessees, and occupiers of all mills and manufactories or other works using the waters of such stream for a distance of twenty miles below the point at which such water is intended to be abstracted, such distance to be measured along the course of such stream, unless such waters shall, within a less distance than twenty miles, fall into or unite with any navigable stream, and then only to the owners or reputed owners, lessees or reputed lessees, and occupiers of such mills and manufactories as aforesaid, which shall be situate between the point at which such water is proposed to be abstracted, and the point at which such water shall fall into or unite with such navigable stream; and such notice shall state the name (if any) by which the stream is known at the point at which such water shall be immediately abstracted, and also the parish in which such point is situate, and the time and place of deposit of plans, sections, and books of reference and copies of the *Gazette* notice, respectively with the clerks of the peace and sheriff-clerks, as the case may be.

Notices when it is proposed to abstract water from any stream

26. Previously to the deposit of a petition for leave to bring in a bill relating to crown, church, or corporation property, or

Crown, &c., property.

STANDING
ORDERS.Notice to
owners, &c.

property held in trust for public or charitable purposes, or before the first reading of any such bill brought from the House of Lords, notice in writing of such application to Parliament shall be served upon the owners or reputed owners of such property, and the lessees or reputed lessees of such property, holding leases granted for a life or lives, or for any term of twenty-one years or upwards.

Alteration or
repeal of pro-
visions, notice to
owners, &c.

27. Previously to the deposit of a petition for leave to bring in a bill, whereby any express statutory provision then in force for the protection of the owner, lessee, or occupier of any property, or for the protection or benefit of any public trustees or commissioners, corporation or person, specifically named in such provision, is sought to be altered or repealed, (except in cases where the consent of such parties is by standing order 169 required to be proved before the committee on the bill,) notice in writing of such bill, and of the intention to alter or repeal such provision, shall be served upon every such owner, lessee, or occupier, public trustees or commissioners, corporation, or person.

Notice to owners,
&c., when the
bill is to abridge
any public
works.

28. Previously to the deposit of a petition for leave to bring in a bill whereby the whole or any part of a work authorised by any former act is intended to be relinquished, notices in writing of such bill shall be served upon the owners or reputed owners, lessees, or reputed lessees, and occupiers of the lands in which any part of the said work intended to be thereby relinquished is situate; and the notices required by this order and by orders 24, 25, 26, and 27, shall be served, and the service thereof proved, in the manner directed by standing orders Nos. 21 and 22: (L. S. O. clxxxi. 7.)

Time for serving
notices and
applications.

29. No notice served or application made on a Sunday or Christmas-day, or before eight o'clock in the forenoon, or after eight o'clock in the afternoon of any day, shall be deemed valid, except in the case of delivery of letters by post: (L. S. O. clxxxi. 8.)

3. Documents required to be Deposited, and the Times and Places of Deposit.

Deposits on or before the 30th November.

Plans and books
of reference,
and sections,
with clerk of the
peace.

30. In cases of bills of the second class, a plan and also a duplicate thereof, together with a book of reference thereto, and a section and also a duplicate thereof, as hereinafter described, and in cases of bills of the first class, by which any lands or houses are intended to be taken, a plan, and duplicate thereof, together with a book of reference, shall be deposited for public

Deposit of Maps, Plans, &c.—Tidal Lands. ccxxxi

inspection at the office of the clerk of the peace for every county, riding, or division in *England* or *Ireland*, or in the office of the principal sheriff-clerk of every county in *Scotland*, and where any county in *Scotland* is divided into districts or divisions, then in the office of the principal sheriff-clerk in or for each district or division, in or through which the work is proposed to be made, maintained, varied, extended, or enlarged, or in which such lands or houses are situate, on or before the 30th day of November immediately preceding the application for the bill: (L. S. O. clxxxii. 1.)

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31. In the case of railway bills, a published map, to a scale of not less than half an inch to a mile, (or in *Ireland*, to a scale of not less than a quarter of an inch to a mile,) with the line of railway delineated thereon, so as to show its general course and direction, shall, on or before the 30th day of November, be deposited at the office of the clerk of the peace, or sheriff-clerk, together with the plans, sections, and book of reference: (L. S. O. clxxxii. 4.)

Published map
to be deposited
with clerk of
peace, &c.

32. The clerks of the peace or sheriff-clerks, or their respective deputies shall make a memorial in writing upon the plans, sections, and books of reference so deposited with them, denoting the time at which the same were lodged in their respective offices, and shall at all seasonable hours of the day permit any person to view and examine one of the same, and to make copies or extracts therefrom; and one of the two plans and sections so deposited shall be sealed up and retained in the possession of the clerk of the peace or sheriff-clerk (a) until called for by order of one of the two Houses of Parliament.

Clerks of peace
to endorse a
memorial on
plans, &c.

(a) See 1 Vict. c. 83, Appendix, p. i., ante: (L. S. O. clxxxii. 2.)

33. In cases where the work shall be situate on tidal lands within the ordinary spring tides, a copy of the plans and sections shall, on or before the 30th day of November, be deposited at the office of the harbour department, Board of Trade, marked "Tidal waters," and on such copy all tidal waters shall be coloured blue, and if the plans include any bridge across tidal waters, the dimensions as regards span and headway of the nearest bridges, if any, above and below the proposed new bridge, shall be marked thereon; and in all such cases such plans and sections shall be accompanied by a published map or ordnance sheet of the country over which the works are proposed to extend, or are to be carried, with their position and extent or route accurately laid down thereon: (L. S. O. clxxxii. 3.)

Tidal lands.
Plans, &c., in
certain cases to
be deposited at
the harbour
department,
Board of
Trade.

34. In the case of railway bills, a copy of all plans, sections, and books of reference, required by the orders of the House to

Railways.

STANDING
ORDERS.Plans, &c., at
the office of the
Board of Trade.

be deposited in the office of any clerk of the peace or sheriff-clerk, on or before the 30th day of November immediately preceding the application for the bill, together with the said published map, with the line of railway delineated thereon, so as to show its general course and direction, shall on or before the same day be deposited in the office of the Board of Trade: (L. S. O. clxxxii. 5.)

Deposit of plans
&c., in Private
Bill Office.

35. On or before the 30th day of November, a copy of the said plans, sections, and books of reference, and in the case of railway bills, also a copy of the said published map, with the line of railway delineated thereon, shall be deposited in the Private Bill Office of this House: (L. S. O. clxxxii. 6.)

Deposit of plans,
&c., with Metro-
politan Board of
Works.

36. In cases where any portion of the work shall be situate within the limits of the metropolis, as defined by the "Metropolis Management Act, 1855," a copy of so much of the plans and sections as relates to such portion of the work shall, on or before the 30th day of November, be deposited at the office of the Metropolitan Board of Works.

Parish plan, sec-
tion, and book
of reference,
with parish
clerk, &c.

37. On or before the 30th day of November, a copy of so much of the said plans and sections as relates to each parish in or through which the work is intended to be made, maintained, varied, extended, or enlarged, or in which any lands or houses, intended to be taken, are situate, (see fig. 5,) together with a copy of so much of the book of reference as relates to such parish, shall be deposited with the parish clerk of each such parish in *England*, or, in the case of any extra-parochial place, with the parish clerk of some parish immediately adjoining thereto, or in case of any place within the limits of the metropolis, as defined by the act 18 & 19 Vict. c. 120, intituled, "An Act for the better Local Management of the Metropolis," except the city of London, with the clergy of the vestry of each parish in schedule A., and with the clerk of the district board of parishes in schedule B. of the said act; with the schoolmaster of each such parish in *Scotland*, or if there be no schoolmaster of any such parish, then with the session clerk, or in royal burghs with the town-clerk, and with the clerk of the union within which such parish is included in *Ireland*. (See Appendix, Act 1 Vict. c. 83; L. S. O. clxxxii. 7.)

Gazette notice to
be deposited
with plans, &c.,
with clerks of
peace, parish
clerks, &c.

38. Wherever any plans, sections, and books of reference, or parts thereof, are required to be deposited, a copy of the notice published in the *Gazette* of the intended application to Parliament shall be deposited therewith: (L. S. O. clxxxii. 8.)

*Deposits on or before the 23d December.*Petition for bill,
&c., to be de-

39. Every petition for a private bill, headed by a short title descriptive of the undertaking or bill, corresponding with that

at the head of the advertisement, with a declaration, signed by the agent, and a printed copy of the bill annexed, shall be deposited in the Private Bill Office (a) on or before the 23d day of December (b); and such petition, bill, and declaration shall be open to the inspection of all parties; and printed copies of the bill shall also be delivered therewith for the use of any member of the House or agent who may apply for the same.

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ORDERS.

posited in Pri-
vate Bill Office.

(a) Bills in the House of Lords are deposited in the office of the Clerk of the Parliaments: (L. S. O. xciii. 2.)

(b) Before 17th December in House of Lords: (*Ibid.*)

40. Such declaration shall state to which of the two classes of bills such bill in the judgment of the agent belongs; and if the proposed bill shall give power to effect any of the following objects; that is to say:

Declaration of
agent as to class
of bill, and
powers thereof,
to be annexed
to petition.

Power to take any lands or houses compulsorily, or to extend the time granted by any former act for that purpose:

Power to levy tolls, rates, or duties, or to alter any existing tolls, rates, or duties; or to confer, vary, or extinguish any exemption from payment of tolls, rates, or duties, or to confer, vary, or extinguish any other right or privilege:

Power to amalgamate with any other company, or to sell or lease their undertaking, or to purchase or take on lease the undertaking of any other company:

Power to interfere with any crown, church, or corporation property, or property held in trust for public or charitable purposes:

Power to relinquish any part of a work authorised by a former act:

Power to divert into any intended cut, canal, reservoir, aqueduct, or navigation, or into any intended variation, extension, or enlargement thereof respectively, any water from any existing cut, canal, reservoir, aqueduct, or navigation, whether directly or derivatively, and whether under any agreement with the proprietors thereof, or otherwise:

Power to make, vary, extend, or enlarge any cut, canal, reservoir, aqueduct, or navigation:

Power to make, vary, extend, or enlarge any railway.

The said declaration shall state which of such powers are given by the bill, and shall indicate in which clauses of the bill (referring to them by their number) such powers are given, and shall further state that the bill does not give power to effect any of the objects enumerated in this order, other than those stated in the declaration.

If the proposed bill shall not give power to effect any of the objects enumerated in the preceding order, the said declaration shall state that the bill does not give power to effect any of such objects.

The said declaration shall also state that the bill does not give any powers other than those included in the notices for the bill.

41. On or before the 23d day of December, a printed copy of every railway and canal bill, and of every bill for incor-

Copy of railway,
&c., bills to be
deposited at

STANDING
ORDERS.

Board of Trade;
dock, &c., bills
at harbour de-
partment, Board
of Trade; and
turnpike bills
with Secretary
of State.

Copy of bills
relating to works
within limits of
the metropolis
to be deposited
with the Metro-
politan Board
of Works.

porating or giving powers to any company, shall be deposited at the office of the Board of Trade; a printed copy of every bill relating to any dock, harbour, navigation, pier, or port, shall be deposited at the office of the harbour department of the Board of Trade, marked "Tidal Waters;" and a printed copy of every bill relating to turnpike roads at the office of the Secretary of State for the Home Department: (L. S. O. clxxxii. 11.)

42. On or before the 23d day of December, a printed copy of every bill of the second class, whereby any work shall be authorised within the limits of the metropolis, as defined by "The Metropolis Management Act, 1855," shall be deposited at the office of the Metropolitan Board of Works.

Deposits on or before the 31st December.

Other documents
required to be
deposited in
Private Bill
Office.

Documents to
be deposited in
Private Bill
Office in regard
to joint stock
companies' bills.

43. On or before the 31st day of December there shall be also deposited in the Private Bill Office, all estimates, declarations, and lists of owners, lessees, and occupiers, which are required by the standing orders of the House: (L. S. O. clxxxii. 9; exci. 1.*)

44. As respects all bills for the incorporation of joint stock companies, or proposed companies for carrying on any trade or business, or for conferring upon such companies the power of suing and being sued, there shall be deposited in the Private Bill Office, on or before 31st December, a copy of the deed or agreement of partnership (if any) under which the company or proposed company is acting, and in all cases a declaration stating the following matters:—

- 1st. The present and proposed amount of the capital of the company.
- 2d. The number of shares, and the amount of each share.
- 3d. The number of shares subscribed for.
- 4th. The amount of subscriptions paid up.
- 5th. The names, residences, and descriptions of the shareholders or subscribers, (so far as the same can be made out,) and of the actual or provisional directors, treasurers, secretaries, or other officer, if any.

And such documents shall be verified by the signature of some authorised officer of the company or proposed company, (if any,) and by some responsible party promoting the bill; and copies of such declarations shall be printed at the expense of the promoters of the bill, and delivered at the Vote Office for the use of the members of the House, and at the Private Bill Office for the use of any agent who may apply for the same.

* This order relates to the statement required as to houses inhabited by the labouring classes, and directs such statement to be deposited in the office of the Clerk of the Parliaments.

Deposits before 31st December—Estimate. CCXXXV

45. On or before 31st December, copies of the estimate of expense of the undertaking; and where a declaration alone, or declaration and estimate of the probable amount of rates and duties, are required, copies of such declaration, or of such declaration and estimate, shall be printed at the expense of the promoters of the bill, and delivered at the Vote Office for the use of the members of the House, and at the Private Bill Office for the use of any agent who may apply for the same: (L. S. O. clxxxii. 10.)

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ORDERS.

Copies of estimate, declaration, &c., to be printed, and delivered in Vote Office and Private Bill Office.

46. The estimate for any works proposed to be authorised by any railway, dock, or harbour bill, shall be in the following form, or as near thereto as circumstances may permit:—

Form of estimate.

<i>Estimate of the proposed</i>				<i>Railway.</i>			
Line, No.	Miles. f. ch.			Whether single or double.			
Length of line,				...			
	Cubic yds.	Price per ld.		£	s	d.	£
Earthworks :							
Cuttings—Rock,							
Soft soil,							
Roads,							
TOTAL,							
Embankments, including roads,	Cubic yds.,						
Bridges—Public roads,	Number,						
Accommodation bridges and works,							
Viaducts,							
Culverts and drains,							
Metallings of roads and level crossings,							
Gatekeepers' houses at level crossings,							
Permanent way, including fencing :				Cost per Mile.			
	Miles.	fms.	chs.	£ s. d.			
	at						
Permanent way for sidings, and cost of junctions,							
Stations,							
Contingencies,				per cent.			
Land and buildings :	A. B. P.						
				TOTAL, £			

The same details for each branch, and general summary of total cost.

47. No deposit shall be deemed valid if made on a Sunday or Christmas-day, or before eight o'clock in the forenoon, or after eight o'clock in the afternoon of any day: (L. S. O. clxxxii. 15.)

Deposit not valid on Sunday, &c.

STANDING
ORDERS.4. *Form in which Plans, Books of Reference, Sections and Cross Sections, shall be prepared.**Plans.**Description of
Plans.Lands within
deviation to be
on plan.Buildings, &c.,
on enlarged
scale.Plan to describe
brooks, &c., to be
diverted.Distances to be
marked in miles
and furlongs, and
memorandum of
curves and tunnelling.Diversion and
widening or
narrowing of
roads, &c., to be
shown.

48. Every plan required to be deposited shall be drawn to a scale of not less than four inches to a mile, and in the case of bills of the first class, shall describe the lands intended to be taken, and in the case of bills of the second class, shall describe the line or situation of the whole of the work, (no alternative line or work being in any case permitted,) and the lands in or through which it is to be made, maintained, varied, extended or enlarged, or through which every communication to or from the work shall be made; and where it is the intention of the parties to apply for powers to make any lateral deviation from the line of the proposed work, the limits of such deviation shall be defined upon the plan, and all lands included within such limits shall be marked thereon; and unless the whole of such plan shall be upon a scale of not less than a quarter of an inch to every 100 feet, an enlarged plan shall be added of any building, yard, court-yard, or land within the curtilage of any building, or of any ground cultivated as a garden, either in the line of the proposed work, or included within the limits of the said deviation, upon a scale of not less than a quarter of an inch to every 100 feet: (L. S. O. clxxxiii. 1.)

49. In all cases where it is proposed to make, vary, extend, or enlarge any cut, canal, reservoir, aqueduct, or navigation, the plan shall describe the brooks and streams to be directly diverted into such intended cut, canal, reservoir, aqueduct, or navigation, or into any variation, extension, or enlargement thereof respectively, for supplying the same with water: (L. S. O. clxxxiii. 2.)

50. In all cases where it is proposed to make, vary, extend, or enlarge any railway, the plan shall exhibit thereon the distances in miles and furlongs, from one of the termini; and a memorandum of the radius of every curve not exceeding one mile in length shall be noted on the plan in furlongs and chains; and where tunnelling as a substitute for open cutting is intended, such tunnelling shall be marked by a dotted line on the plan: (L. S. O. clxxxiii. 3.)

51. If it be intended to divert, widen, or narrow any turnpike road, public carriage road, navigable river, canal, or railway, the course of such diversion, and the extent of such widen-

* See ante, p. 323, et seq.

ing or narrowing, shall be marked upon the plan: (L. S. O. clxxxiii. 4.)

STANDING
ORDERS.

52. When a railway is intended to form a junction with an existing or authorised line of railway, the course of such existing or authorised line of railway shall be shown on the deposited plan for a distance of 800 yards on either side of the proposed junction, on a scale of not less than four inches to a mile.

In case of junctions, course of existing line to be shown on deposited plan.

Book of Reference.

53. The book of reference to every such plan shall contain the names of the owners or reputed owner, lessees or reputed lessees, and occupiers of all lands and houses in the line of the proposed work, or within the limits of deviation as defined upon the plan, and shall describe such lands and houses respectively: (L. S. O. clxxxiii. 6.)

Contents of
book of
reference.

Sections.

54. The section shall be drawn to the same horizontal scale as the plan, and to a vertical scale of not less than one inch to every 100 feet, and shall show the surface of the ground marked on the plan, the intended level of the proposed work, the height of every embankment and the depth of every cutting, and a datum horizontal line, which shall be the same throughout the whole length of the work, or any branch thereof respectively, and shall be referred to some fixed point (stated in writing on the section) near some portion of such work, and in the case of a canal, cut, navigation, turnpike or other carriage road or railway, near either of the termini: (L. S. O. clxxxiii. 7.)

Section to be drawn to a scale of not less than one inch to every 100 feet.

55. In cases of bills for improving the navigation of any river, there shall be a section which shall specify the levels of both banks of such river; and where any alteration is intended to be made therein, it shall describe the same by feet and inches, or decimal parts of a foot: (L. S. O. clxxxiii. 8.)

Section to specify level of both banks.

56. In every section of a railway, the line of the railway marked thereon shall correspond with the upper surface of the rails: (L. S. O. clxxxiii. 9.)

Line of railway on section to correspond with upper surface of rails.

57. Distances on the datum line shall be marked in miles and furlongs to correspond with those on the plan; a vertical measure from the datum line to the line of the railway shall be marked in feet and inches, or decimal parts of a foot, at each change of the gradient or inclination; and the proportion or rate of inclination between each such change shall also be marked: (L. S. O. clxxxiii. 10.)

Vertical measures to be marked at change of gradient.

58. Wherever the line of the railway is intended to cross any

Height of railway over, or

STANDING
ORDERS.

depth under surface of roads, &c., to be marked, and bridges and level crossings.

turnpike road, public carriage road, navigable river, canal or railway, the height of the railway over or depth under the surface thereof, and the height and span of every arch of all bridges and viaducts, by which the railway will be carried over the same, shall be marked in figures at every crossing thereof; and where the railway will be carried across any such turnpike road, public carriage road or railway, on the level thereof, such crossing shall be so described on the section; and it shall also be stated if such level will be unaltered: (L. S. O. clxxxiii. 11.)

Cross sections of canals, roads, &c., crossed by the railway when level or rate of inclination altered.

59. If any alteration be intended in the water level of any canal, or in the level or rate of inclination of any turnpike road, public carriage road or railway, which will be crossed by the line of railway, then the same shall be stated on the said section, and each alteration shall be numbered; and cross sections, in reference to the said numbers, on a horizontal scale of not less than one inch to every 330 feet, and on a vertical scale of not less than one inch to every 40 feet, shall be added, which shall show the present surface of such canal, road or railway, and the intended surface thereof when altered; and the greatest of the present and intended rates of inclination of such road or railway shall also be marked in figures thereon; and where any public carriage road is crossed on the level, a cross section of such road shall also be added, and all such cross sections shall extend for 200 yards on each side of the centre line of the railway: (L. S. O. clxxxiii. 12.)

Embankments and cuttings.

60. Wherever the extreme height of any embankment, or the extreme depth of any cutting shall exceed five feet, the extreme height over or depth under the surface of the ground shall be marked in figures upon the section; and if any bridge or viaduct of more than three arches shall intervene in any embankment, or if any tunnel shall intervene in any cutting, the extreme height or depth shall be marked in figures on each of the parts into which such embankment or cutting shall be divided by such bridge, viaduct, or tunnel: (L. S. O. clxxxiii. 13.)

Tunnelling and viaduct to be marked.

61. Where tunnelling, as a substitute for open cutting, or a viaduct as a substitute for solid embankment, is intended, the same shall be marked on the section: (L. S. O. clxxxiii. 14.)

In case of junctions, gradient of existing line to be shown on deposited section.

62. When a railway is intended to form a junction with an existing or authorised line of railway, the gradient of such existing or authorised line of railway shall be shown on the deposited section, and in connexion therewith, and on the same scale as the general section, for a distance of 800 yards on either side of the point of junction.

Estimates—Deposits of Money—Declarations. ccxxxix

5. *Estimates and Deposit of Money, and Declarations in certain cases.*

STANDING
ORDERS.

63. An estimate of the expense of the undertaking under each bill of the second class shall be made and signed by the person making the same: (*See as to depositing estimate in Private Bill Office, No. 43; L. S. O. clxxxiv. 1.*)

Estimate in bills
of the second
class.

64. In the case of a railway bill, authorising the construction of works by other than an existing railway company incorporated by act of Parliament, and which has during the year last past paid dividends on its ordinary share capital, a sum not less than five per cent. on the amount of the estimate of expense, and in the case of all bills other than railway bills, a sum not less than four per cent. on the amount of such estimate, shall, previously to the 15th day of January, be deposited with the Court of Chancery in *England*, if the work is intended to be done in *England*, or with the Court of Chancery in *England*, or the Court of Exchequer in *Scotland*, if such work is intended to be done in *Scotland*, and with the Court of Chancery in *Ireland*, if such work is intended to be done in *Ireland*: (*See Appendix C; L. S. O. clxxxiii. 2.*)

Five per cent.
and four per
cent. of estimate
to be deposited.

65. Where the work is to be made, wholly or in part, by means of funds, or out of money to be raised upon the credit of present surplus revenue, belonging to any society or company, or under the control of directors, trustees, or commissioners, as the case may be, of any existing public work, such parties being the promoters of the bill, a declaration stating those facts, and setting forth the nature of such control, and the nature and amount of such funds or surplus revenue, and showing the actual surplus of such funds or revenue, after deducting the funds required for purposes authorised by any act or acts of Parliament, and also the funds which may be required for any other work to be executed under any bill in the same session, and given under the common seal of the society or company, or under the hand of some authorised officer of such directors, trustees, or commissioners, may be deposited, and in such case no deposit of money shall be required in respect of so much of the estimate of expense as shall be provided for by such surplus funds: (*See as to deposit of declaration in Private Bill Office, No. 43.*)

Cases wherein
declaration is
deposited.

66. In cases where the work is to be made out of money to be raised upon the security of the rates, duties, or revenue to be created by or to arise under any bill, under which no private or personal pecuniary profit or advantage is to be derived, a declaration stating those facts, and setting forth the means by which

Declaration and
estimate of
amount of rates
may be de-
posited.

STANDING
ORDERS.

funds are to be obtained for executing the work, and signed by the party or agent soliciting the bill, together with an estimate of the probable amount of such rates, duties, or revenue, signed by the person making the same, may be deposited, and in such case no deposit of money shall be required. (*See as to deposit of estimate and declaration in Private Bill Office, No. 43; L. S. O. clxxxiv. 7.*)

In cases of bills brought from the House of Lords.

Deposit of rail-
way bills at
Board of Trade.

67. In the case of railway bills brought from the House of Lords, a copy of every bill, as brought into the House of Commons, shall be deposited in the office of the Board of Trade, not later than two days after the bill is read a first time.

Notices to be
given and depo-
sits made in
cases where work
is altered while
bill is in Parlia-
ment.

68. Where any alteration shall have been made, or shall be desired by the parties to be made, in any bill brought from the House of Lords after the introduction of the bill into Parliament in any work the bill for which shall be included in the second class of bills hereinbefore mentioned, and the plans and sections for which shall have been deposited and the notices for which shall have been given as before mentioned, a plan and section of such alteration, on the same scale and containing the same particulars as the original plan and section, together with a book of reference thereto, shall be deposited with the clerk of the peace of every county, riding, or division in *England* or *Ireland*, and in the office of the sheriff-clerk of every county in *Scotland*, and where any county in *Scotland* is divided into districts or divisions, then in the office of the principal sheriff-clerk in and for each district or division in which such alteration is proposed to be made; and a copy of such plan and section, so far as relates to each parish, together with a book of reference thereto, shall be deposited with the parish clerks of each such parish in *England*, or, in the case of any extra-parochial place, with the parish clerk of some parish immediately adjoining thereto, with the schoolmaster of each such parish in *Scotland*, or if there be no schoolmaster of any such parish, then with the session-clerk, or in royal burghs with the town-clerk, and the clerk of the union within which such parish in *Ireland* is included, in which such alteration is intended to be made, one month previously to the introduction of the bill for making such work into this house; and the intention to make such alteration shall be published in manner before directed in the *London, Edinburgh, or Dublin Gazette*, as the case may be, and some one and the same newspaper of the county in which such alteration shall be situate, or if there be no such paper printed therein, then in the newspaper of some county adjoining thereto, for three successive weeks

previously to the introduction of the bill into this house; and personal application, with a notice in writing in the form hereinbefore mentioned, shall be made to the owners or reputed owners, lessees or reputed lessees, or in their absence from the United Kingdom, to their agents respectively, and to the occupiers of lands through which any such alteration is intended to be made; and the consent of such owners or reputed owners, lessees or reputed lessees, and occupiers, to the making of such alteration, shall be proved before the examiner: (L. S. O. clxxxii. 12.)

STANDING
ORDERS.

69. Previous to any bill for making any work, the bill for which shall be included in the second class of bills hereinbefore mentioned, being brought to this House from the Lords, in which any alteration has been made in its progress through Parliament, a map or plan and section of such work, showing any variation, extension, or enlargement which is intended to be made in consequence of such alteration, shall be deposited in the Private Bill Office; and such map or plan and section shall be on the same scale and contain the same particulars as the original map or plan and section of the said work: (L. S. O. clxxxii. 13.)

Deposit of altered plan and section in Private Bill Office.

Wharnccliffe Meeting.

70. In the case of every bill brought from the House of Lords to empower any company already constituted by act of Parliament to execute, undertake, or contribute towards any work other than that for which it was originally established, or to sell or lease their undertaking, or any part thereof, or to amalgamate the same, or any part thereof, with any other undertaking, or to abandon their undertaking, or any part thereof, or to dissolve the said company, the examiner shall report as to compliance or non-compliance with the following order:

Bill to be submitted to a meeting of proprietors in incorporated companies in certain cases.

1st. The bill, as proposed to be introduced into this House, shall be submitted to a meeting of the proprietors of such company at a meeting held specially for that purpose.

2d. Such meeting shall be called by advertisement inserted for two consecutive weeks in a morning newspaper published in London, Edinburgh, or Dublin, as the case may be, and in a newspaper of the county or counties in which the principal office or offices of the company is or are situate; and also by a circular addressed to each proprietor at his last known or usual address, and sent by post, or delivered at such address, not less than ten days before the holding of such meeting, inclosing a blank form of proxy, with proper instructions for the use of the same; and the

STANDING
ORDERS.

same form of proxy and the same instructions, and none other, shall be sent to every such proprietor; but no such form of proxy shall be stamped, nor shall the funds of the company be used for the stamping any proxies, except the company shall at a general meeting determine otherwise, in which case a stamped proxy shall be sent to each proprietor, with such instructions as aforesaid.

3d. Such meeting shall be held not earlier than seven days after the last insertion of such advertisement.

4th. At such meeting the said bill shall be submitted to the proprietors aforesaid then present, and approved of by proprietors, present in person or by proxy, holding at least three-fourths of the paid-up capital of the company represented at such meeting, such proprietors being qualified to vote at the meeting in right of such capital: (L. S. O.) clxxxv. 1.)

Proof to be required before examiner of consent of proprietors of any company to sum authorised to be raised in aid of undertaking of another company.

71. When in any bill a provision is inserted authorising any company to subscribe towards or to guarantee or to raise any money in aid of the undertaking of another company, (which bill is not brought in by the company so authorised, or of which such company is not a joint promoter,) proof shall be required before the examiner that the company so authorised has consented to such subscription, guarantee, or raising of money, at a meeting of the proprietors of the ordinary shares in such company, held specially for that purpose, in the same manner and subject to the same provisions as the meeting directed to be held under standing order 70, and that such consent was given by such proprietors, present in person or by proxy, holding at least three-fourths of the ordinary paid-up capital of the company represented at such meeting, such proprietors being qualified to vote at the meeting in right of such capital; and that the notices for the bill state the sum authorised to be subscribed, or guaranteed or raised, and also state that the consent of the company has been given as aforesaid; in any case in which such consent has been given, it shall not be necessary to submit the bill, in respect of such provision as aforesaid, to the approval of a meeting to be held in accordance with standing order 70: (L. S. O. clxxxv. 3.)

Consent of directors, &c., who are named in a bill, to be proved.

72. When in any bill brought from the House of Lords for the purpose of establishing a company for carrying on any work or undertaking, the name of any person or persons shall be introduced as manager, director, proprietor, or otherwise concerned in carrying such bill into effect, proof shall be required before the examiner that the said person or persons have subscribed their names to the petition for the said bill, or to a printed copy of the said bill, as brought to this House: (L. S. O. clxxxv. 2.)

IV.—PROCEEDINGS OF THE EXAMINERS OF PETITIONS FOR
PRIVATE BILLS.

STANDING
ORDERS.

73. The examination of the petitions for private bills which shall have been duly deposited in the Private Bill Office (a), shall commence on the 18th day of January, in such order and according to such regulations as shall have been made by Mr Speaker.

When examination of petitions to commence.

(a) In the office of the Clerk of the Parliaments, L. S. O. cxciii. 3; and the rules in the Appendix to the Lords' standing orders.

74. One of the examiners shall give at least seven clear days' notice in the Private Bill Office of the day appointed for the examination of each petition which shall have been duly deposited in the Private Bill Office; and in case the promoters shall not appear at the time when the petition shall come on to be heard, the examiner to whom the case shall have been allotted shall strike the petition off the general list of petitions, and shall not re-insert the same, except by order of the House.

Notice to be given by one of the examiners of day appointed for examination.

75. In all cases of petitions for additional provision in private bills and of estate bills brought from the House of Lords, and of bills introduced by leave of this House in lieu of other bills which shall have been withdrawn, and referred to the examiner, and of bills referred in pursuance of standing order 185, the examiner shall give at least two clear days' notice in the Private Bill Office of the day on which the same will be examined; and he shall report to the House whether the standing orders have or have not been complied with; and when they have not been complied with, the facts upon which his decision is founded, and any special circumstances connected with the case.

Notice and report in cases of petitions for additional provision in private bills, &c.

76. Any parties shall be entitled to appear and to be heard, by themselves, their agents and witnesses, upon a memorial addressed to the examiner, complaining of a non-compliance with the standing orders, provided the matter complained of be specifically stated in such memorial, and the party (if any) who may be specially affected by the non-compliance with the standing orders have signed such memorial and shall not have withdrawn his signature thereto (a), and such memorial have been duly deposited in the Private Bill Office. (See orders 193, 217, 218, 219, and 220.)

Memorials complaining of non-compliance.

(a) L. S. O. cxciii. 4.

77. In case any proprietor in any company shall by himself, or any person authorised to act for him in that behalf, have dissented at any meeting called in pursuance of standing orders 70 or 71, such proprietor shall be permitted to be heard by the examiner of petitions, on the compliance with such standing

Dissenting proprietors to be heard.

STANDING
ORDERS.

order, by himself, his agents and witnesses, on a memorial addressed to the examiner, or by the committee on the proposed bill, by himself, his counsel or agents and witnesses, on a petition presented to the House, such memorial or petition having been duly deposited in the Private Bill Office. (See orders 126, 217, and 220; L. S. O. exc. 2.)

(3.) If any company authorised to subscribe to the undertaking of another company shall petition the House for leave to be heard against any alteration of the bill made in the House of Commons, materially affecting the conditions under which their subscription was agreed to, such petition shall be referred to the Standing Order Committee, and the said committee shall report whether it is reasonable, and to what extent they should be heard; and if the committee report that it is so reasonable, leave may be given accordingly.

Proof by
affidavit.

78. The examiner may admit affidavits in proof of the compliance with the standing orders of the House, unless in any case he shall require further evidence; and such affidavit shall be sworn, if in *England*, before a justice of the peace; if in *Scotland*, before any sheriff-depute or his substitute; and if in *Ireland*, before any judge or assistant barrister of that part of the United Kingdom, or before a justice of the peace.

Examiner to
indorse petition, and when
standing orders
not complied
with, to report.

79. The examiner shall certify by indorsement on each petition which shall have been duly deposited in the Private Bill Office, whether the standing orders have or have not been complied with; and when they have not been complied with, he shall also report to the House the facts upon which his decision is founded, and any special circumstances connected with the case.

(a) In the House of Lords this certificate is to be deposited with the Clerk of Parliament: (L. S. O. exciii. 5.)

To report in
cases of bill
originating in
the Lords.

80. The examiner shall make a report of the several cases in which he shall have certified that the standing orders have or have not been complied with in respect of any bills which, in pursuance of any report from the chairman of the committee of ways and means, under standing order 82, shall originate in the House of Lords; and where they have not been complied with, he shall also report, separately, the facts upon which his decision is founded, and any special circumstances connected with the case (a).

(a) L. S. O. exciii.

Special report
in certain cases

81. In case the examiner shall feel doubts as to the due construction of any standing order in its application to a particular

case he shall make a special report of the facts to the House, without deciding whether the standing order has or has not been complied with; and in such case he shall indorse the petition with the words "special report," either alone, or if non-compliances with other standing orders shall have been proved, in addition to the words "standing orders not complied with" (L. S. O. exciii.)

STANDING
ORDERS.

Proceedings of, and in relation to, the Chairman of the Committee of Ways and Means, and the Counsel to Mr Speaker.

82. The Chairman of the Committee of Ways and Means shall, at the commencement of each session, seek a conference with the Chairman of Committees of the House of Lords for the purpose of determining in which House of Parliament the respective private bills should be first considered, and such determination shall be reported to the House.

Chairman of
Ways and Means
to seek a conference with the
Chairman of
Committees of
House of Lords.

83. The Chairman of the Committee of Ways and Means, with the assistance of the counsel to Mr Speaker, shall examine all private bills, whether opposed or unopposed, and call the attention of the House, and also of the chairman of the committee on every opposed private bill, to all points which may appear to him to require it; and copies of all such bills shall be laid by the agent before the said chairman and counsel not later than the day after the examiner of petitions shall have endorsed the petition for the bill.

Chairman of
Ways and Means
to examine all
private bills, &c.

84. The Chairman of the Committee of Ways and Means shall make a report to the House previously to the second reading of any private bill by which it is intended to authorise, confirm, or alter any contract with any department of the government whereby a public charge has been or may be created; and such report, together with a copy of the contract, and of any resolution to be proposed in relation thereto, shall be circulated with the votes two clear days at least before the day on which the resolution is to be considered in a committee of the whole House, which consideration shall not take place until after the time of private business; nor shall the report of any such resolution be considered until three clear days at least after the resolution shall have been agreed to by the committee.

Chairman of
Ways and Means
to report on bills
relating to Government
contracts.

85. Two clear days at least before the day appointed for the consideration of any private bill by a committee, there shall be laid before the Chairman of Ways and Means and the counsel to Mr Speaker, by the agent, copies of every such bill as proposed to be submitted to the committee, and such copies shall be signed by the agent for the bill.

Copies of bill, as
proposed to be
submitted to committee, to be laid
before Chairman
of Ways and
Means, &c.

STANDING
ORDERS.

Power to chairman to report special circumstances, &c., to the House.

Copy of bill as amended in committee to be laid before Chairman of Ways and Means, &c.

On consideration of report of railway bill, Chairman of Ways and Means to acquaint the House if orders have been observed.

Clause or amendment on consideration of bill, or on third reading, to be submitted to Chairman of Ways and Means, &c.

Copy of amendments by House of Lords, and of proposed amendments thereto, to be laid before Chairman of Ways and Means, &c.

Referees on private bills to be constituted.

86. The Chairman of the Committee of Ways and Means shall be at liberty, at any period after any private bill shall have been referred to a committee, to report to the House any special circumstances relative thereto which may appear to him to require it, or to inform the House that in his opinion any unopposed private bill should be treated as an opposed private bill.

87. Three clear days at least before the consideration of any private bill ordered to lie upon the table, a copy of every such bill, as amended in committee, shall be laid by the agent before the Chairman of the Committee of Ways and Means and the counsel to Mr Speaker, and deposited at the office of the Board of Trade.

88. On or before the consideration of the report of every railway bill, the Chairman of the Committee of Ways and Means shall inform the House, or signify in writing to Mr Speaker, whether the bill contain the several provisions required by the standing orders.

89. When it is intended to bring up any clause, or to propose any amendment on the consideration of any private bill ordered to lie upon the table, or any verbal amendment on the third reading of any private bill, the same shall be submitted by the agent to the Chairman of the Committee of Ways and Means, and the counsel to Mr Speaker, on the day on which notice is given thereof in the Private Bill Office; and the said chairman shall inform the House, or signify in writing to Mr Speaker, whether such clause or amendment be such as ought or ought not to be entertained by the House, without referring the same to the Select Committee on Standing Orders.

90. A copy of all amendments made in the House of Lords to any private bill, and of all amendments to such amendments intended to be proposed in this House, shall be laid by the agent before the Chairman of the Committee of Ways and Means and the counsel to Mr Speaker, before two o'clock on the day previous to that on which the same are respectively appointed for consideration by the House.

Referees on Private Bills—Proceedings before them.

91. The Chairman of Ways and Means, with not less than three other persons, who shall be appointed by Mr Speaker for such period as he shall think fit, shall be referees of the House on private bills; such referees to form one or more courts; three at least to be required to constitute each court: provided that the chairman of any second court shall be a member of this House; and provided that no such referee, if he be a member of this House, shall receive any salary.

Petitions against Bill—Select Committee on S. O. ccxlvii

92. The practice and procedure of the referees, their times of sitting, order of business, and the forms and notices required in their proceedings, shall be prescribed by rules, to be framed by the Chairman of Ways and Means, subject to alteration by him as occasion may require, but only one counsel shall appear before such referees in support of a private bill, or in support of any petition in opposition thereto, unless specially authorised by the referees. All such rules and alterations, when made, to be laid on the table of the House.

STANDING ORDERS.

Rules of practice and procedure to be made by Chairman of Ways and Means.

93. The referees on private bills shall decide upon all petitions as to the rights of the petitioners to be heard upon such petitions, without prejudice, however, to the power of the select committee to which the bill is referred to decide upon any question as to such rights arising incidentally in the course of their proceedings.

Referees on private bills to decide as to rights of petitioners to be heard upon their petitions, &c

94. The select committee to which any bill has been referred may, subject to the approval of the Chairman of Ways and Means, refer any question arising in the course of their inquiry, which they may deem suitable to be so referred, to the referees for their decision, such question to be stated in writing, and signed by the chairman of the committee. The referees, so soon as their inquiry has been completed, to return the question, with their decision certified thereon, to the chairman.

Committees on bills empowered to refer questions in special cases to referees.

Proceedings of the Select Committee on Standing Orders.

95. When any report of the examiner of petitions for private bills, in which he shall report that the standing orders have not been complied with, shall have been referred to the Select Committee on Standing Orders, and after the petition for the bill shall have been duly presented, they shall report to the House whether such Standing Orders ought or ought not to be dispensed with, and whether in their opinion the parties should be permitted to proceed with their bill, or any portion thereof, and under what (if any) conditions.

To report whether standing orders ought or ought not to be dispensed with.

96. The Select Committee on Standing Orders shall have power to report on the cases referred to them in respect of private bills originating in the House of Lords, notwithstanding that the petitions for the same shall not have been presented to the House.

In cases of bills originating in Lords.

97. When any special report from the examiner of petitions as to the construction of a standing order shall have been referred to the Select Committee on Standing Orders, they shall determine, according to their construction of the standing order, and on the facts stated in such report, whether the standing orders have or have not been complied with, and

Proceeding in case of special report.

STANDING
ORDERS.

To report
whether ses-
sional or stand-
ing orders ought
or ought not to
be dispensed
with.

they shall then either report to the House that the standing orders have been complied with, or shall proceed to consider the question of dispensing with the standing orders, as the case may be.

98. When any petition, praying that any of the sessional or standing orders of the House relating to private bills may be dispensed with, shall stand referred to the Select Committee on Standing Orders, they shall report to the House whether such sessional or standing orders ought or ought not to be dispensed with.

To report
whether petition
ought or ought
not to be re-in-
serted in the
general list.

99. When any petition for the re-insertion of any petition for a private bill in the general list of petitions shall stand referred to the Select Committee on Standing Orders, they shall report to the House whether in their opinion such petition ought or ought not to be re-inserted, and, if re-inserted, under what (if any) conditions.

Report as to pro-
posed clause or
amendment.

100. When any clause or amendment proposed on the consideration of any private bill ordered to lie upon the table shall have been referred to the Select Committee on Standing Orders, they shall report to the House whether such clause or amendment should be adopted by the house or not, or whether the bill should be recommitted.

Proceedings of the Committee of Selection, and of the General Committee on Railway and Canal Bills.

Printed copies of
bills to be laid
before Com-
mittee of Selec-
tion and General
Committee.

101. Printed copies of all private bills, not being railway or canal bills, shall be laid before the Committee of Selection, and printed copies of all railway and canal bills before the General Committee on Railway and Canal Bills, by the parties promoting the same, at the first meeting of the said committees respectively.

Committee of
Selection and
General Com-
mittee to group
private bills.

102. The Committee of Selection may, if they think fit, form into groups all private bills, not being railway or canal bills, and the General Committee on Railway and Canal Bills may form into groups all railway and canal bills, which, in their opinion, it may be expedient to submit to the same committee, and shall report the same to the House.

Railway and
canal unopposed
bills.

103. The General Committee on Railway and Canal Bills may, whenever they shall think fit, refer any unopposed railway or canal bill to the Chairman of the Committee of Ways and Means and two other members not locally or otherwise interested, to be nominated by the Committee of Selection.

Committee of
Selection and
General Com-

104. The Committee of Selection in the case of all private bills other than railway and canal bills, and the General Committee on Railway and Canal Bills in the case of such bills,

shall, subject to the order in regard to the interval between the second reading of every private bill and the sitting of the committee thereupon, fix the time for holding the first sitting of every committee on a private bill which shall have been referred to either of the said committees.

STANDING
ORDERS.

Committee on Rail-
way, &c., Bills to
appoint first sit-
ting of com-
mittee.

105. The Committee of Selection shall name the bill or bills which shall be taken into consideration on the first day of the meeting of the committee on any group of bills not being railway or canal bills; and the General Committee on Railway and Canal Bills shall name the bill or bills which shall be taken into consideration on the first day of the meeting of each committee on any group of such bills.

Committee of
Selection and
General Com-
mittee to name
bill or bills to be
considered on
the first day.

106. The Committee of Selection shall consider no bill as an opposed private bill, unless, not later than ten clear days after the first reading thereof, a petition shall have been presented against it, in which the petitioner or petitioners shall have prayed to be heard, by themselves, their counsel, or agents, or unless, where no such petition shall have been presented, the Chairman of the Committee of Ways and Means shall have reported to the House that in his opinion any bill ought to be so treated.

What bills not to
be considered
opposed.

107. The Committee of Selection shall refer every opposed private bill which shall have been referred to them, or any group of such bills, to a chairman and three members, and a referee or a chairman and three members, not locally or otherwise interested therein.

Constitution of
committees on
opposed private
bills.

108. The Committee of Selection shall refer every unopposed private bill, which shall have been referred to them, not being a road bill, to the Chairman of the Committee of Ways and Means, together with one of the members ordered to prepare and bring in the same, and one other member not locally interested therein, if the bill shall have originated in this House; and if the bill shall have been brought from the House of Lords, to the Chairman of the Committee of Ways and Means, together with two other members, of whom one at least shall not be locally or otherwise interested therein.

Constitution of
committees on
unopposed
private bills.

109. The Committee of Selection shall refer all road bills, whether opposed or unopposed, to a committee, consisting of a chairman and three other members, not locally or otherwise interested therein.

Committee of
Selection to refer
all road bills to
a committee.

110. The Committee of Selection shall give each member not less than seven days' notice, by publication in the votes or otherwise, of the week in which it will be necessary for him to be in attendance for the purpose of serving, if required, as a member, not locally or otherwise interested, of a committee on a private bill.

Committee of
Selection to give
notice to mem-
bers.

**STANDING
ORDERS.**

Notice of ap-
pointment and
declaration to be
transmitted to
members.

Members return-
ing no answer to
be reported.

Committee of
Selection may
substitute mem-
bers for others.

Committee of
Selection to send
for persons, &c.

111. The Committee of Selection shall give to each member sufficient notice of his appointment as a member of a committee on any private bill, or group of such bills, and, in every case where a declaration is required to be signed and returned by such member, shall transmit to him a blank form of the declaration required, with a request that it may forthwith be returned properly filled up and signed.

112. The Committee of Selection shall report to the House the name of every member from whom they shall not have received in due time such declaration, so filled up and signed, or, in lieu thereof, an excuse which they shall deem sufficient.

113. The Committee of Selection shall have the power of discharging any member or members of a committee, and of substituting other members.

114. The Committee of Selection shall have power, in the execution of their duties, to send for persons, papers, and records.

Proceedings of Committees on Opposed Bills.

Declaration of
members.

115. Each member of a committee on an opposed private bill, or group of such bills, shall, before he be entitled to attend and vote on such committee, sign the following declaration :

I do hereby declare, That my constituents have no local interest, and that I have no personal interest, in such bill; and that I will never vote on any question which may arise without having duly heard and attended to the evidence relating thereto.

And no such committee shall proceed to business until the said declaration shall have been so signed by each of such members.

Quorum to be
always present.

116. Committees shall not be allowed to proceed if more than one of their members be absent, unless by special leave of the house : (L. S. O. clxxviii. 12.)

Members not to
absent them-
selves.

117. No member of a committee on an opposed private bill shall absent himself from his duties thereon, except in the case of sickness, or by order of the House.

When Chairman
absent.

118. If the chairman shall be absent from the committee, the member next in rotation on the list of members who shall be present shall act as chairman, but in the case of railway and canal bills only until the general committee on such bills shall have appointed, if they shall so think fit, another chairman.

Proceedings
be suspended if
quorum not
present.

119. If at any time during the sitting of any committee more than one of the members be absent, the chairman shall suspend the proceedings of such committee; and if at the expiration of one hour from the time fixed for the meeting of

the committee, or from the time when the chairman shall so have suspended the proceedings, more than one member be absent, the committee shall be adjourned to the next day on which the House shall sit, and then shall meet at the hour on which such committee would have sat, had no such adjournment taken place: (L. S. O. clxxviii. 16.)

STANDING
ORDERS.

120. If any of the members shall not be present within one hour after the time appointed for the meeting of the committee, or if any member shall absent himself from his duties on such committee, every such member shall be reported to the House at its next sitting.

Members absent
to be reported
to the House.

121. If at any time after the committee on a bill shall have been formed, a quorum of members required by the standing orders cannot attend in consequence of any of the members who shall have duly qualified to serve on such committee having become incompetent to continue such service by having been placed on an election committee, or by death or otherwise, the chairman shall report the circumstances of the case to the House, in order that such measures may be taken by the House as shall enable the members still remaining on the committee to proceed with the business referred to such committee, or as the emergency of the case may require.

Absence of mem-
bers by death
or otherwise to
be reported.

122. All questions before committees on private bills shall be decided by a majority of voices, including the voice of the chairman; and whenever the voices are equal, the chairman shall have a second or casting vote.

Questions to be
decided by ma-
jority of voices.

123. The committee on each group of bills shall take the bill or bills first into consideration which shall have been named by the Committee of Selection, or by the General Committee on Railway and Canal Bills, (see No. 105;) and the committee shall, from time to time, appoint the day on which they will enter upon the consideration of each of the remaining bills, and on which they will require the parties severally promoting or opposing the same to enter appearances; and two clear days' notice, at the least, of such appointment, shall be given by the clerk attending the committee to the clerks in the Private Bill Office; and in case the committee shall postpone the consideration of any bill, notice shall be given of the day to which the same is postponed.

Committee on
group to consider
that bill first
which Committee
of Selection or
General Commit-
tee shall have
named, and to
appoint day for
consideration of
remaining bills,
of which clerk
of committee
to give notice.

124. Every committee on an opposed private bill shall report specially to the House the cause of any adjournment over any day on which the House shall sit.

Causes of
adjournment to
be specially
reported.

125. No petition against a private bill shall be taken into consideration by the committee on such bill, which shall not distinctly specify the ground on which the petitioners object to any of the provisions thereof; and the petitioners shall be only heard on such grounds so stated; and if it shall appear to the

Petition against
bill not to be
considered ex-
cept grounds of
objection suffi-
ciently specified.

STANDING
ORDERS.

Petitioners
against bill not
to be heard
unless petition
presented not
later than ten
clear days after
first reading, &c.

Time limited for
petitions com-
plaining of non-
compliance with
standing orders
of the House
of Lords.

Competition to
be a ground of
locus standi.

said committee that such grounds are not specified with sufficient accuracy, the committee may direct that there be given in to the committee a more specific statement, in writing, but limited to such grounds of objection so inaccurately specified.

126. No petitioners against any private bill shall be heard before the committee on the bill, unless their petition shall have been prepared and signed in strict conformity with the rules and orders of this House, and shall have been presented to this House by having been deposited in the Private Bill Office not later than ten clear days after the first reading of such bill, except where the petitioners shall complain of any matter which may have arisen during the progress of the bill before the said committee, or of any proposed additional provision, or of the amendments as proposed in the filled-up bill deposited in the Private Bill Office.

In the House of Lords it is ordered,

That any parties shall be at liberty to appear, and to be heard by themselves, their agents and witnesses, upon any petition which may be referred to the Standing Order Committee complaining of a non-compliance with the standing orders not proved before the examiners, provided the matter complained of be specifically stated in such petition, and that such petition, if the bill originate in this House, and has not been referred to the judges, or approved by the Court of Chancery, be presented on or before the sixth sitting-day after the first reading of the bill, or if the bill be brought from the House of Commons, or has been referred to the judges, or approved by the Court of Chancery, be presented on or before the second sitting-day after the introduction of the bill into this House.

That such committee shall report whether the standing orders have been complied with, and if it shall appear to the committee that they have not been complied with, they shall state the facts upon which their decision is founded, and any special circumstances connected with the case, and also their opinion as to the propriety of dispensing with any of the standing orders in such case.

That three clear days' notice be given of the meeting of such committee.

That no committee on any private bill included in either of the two classes hereinafter mentioned shall have power to examine into the compliance with the standing orders the compliance with which is required to be proved before the examiners: (L. S. O. clxxviii. 7-10.)

127. It shall be competent to the referees on private bills to admit petitioners to be heard upon their petitions against a

private bill, on the ground of competition, if they shall think fit.

STANDING
ORDERS.

128. Where a bill is promoted by an incorporated company, shareholders of such company shall not be entitled to be heard before the committee against such bill, unless their interests, as affected thereby, shall be distinct from the general interests of such company.

In what cases
shareholders
to be heard.

129. Where a railway bill contains provisions for taking or using any part of the lands, railway, stations, or accommodations of another company, or for running engines or carriages upon or across the same, or for granting other facilities, such company shall be entitled to be heard upon their petition against the preamble and clauses of such bill.

In what cases
railway com-
panies to be
heard.

130. It shall be competent to the referees on private bills to admit the petitioners, being the municipal or other authority having the local management of the metropolis, or of any town, or the inhabitants of any town or district alleged to be injuriously affected by a bill, to be heard against such bill, if they shall think fit.

Municipal au-
thorities and
inhabitants of
towns, &c.

131. In all cases of opposed private bills, in which no parties shall have appeared on the petitions against such bills, or having appeared shall have withdrawn their opposition before the evidence of the promoters shall have been commenced, the committees on such bills, shall forthwith refer them back, with a statement of the facts, if not railway or canal bills, to the Committee of Selection, and if railway and canal bills, to the General Committee on Railway and Canal Bills, who shall deal with them as unopposed bills: (L. S. O. clxxviii. 18.)

When opposed
bills may be
treated as un-
opposed.

*Proceedings of, and in relation to, Committees on Bill, whether
Opposed or Unopposed.*

132. At the first meeting of the committee, copies of the bill, as proposed to be submitted to them, and signed by the agent, shall be laid by him before each member of the committee.

Filled-up copies
of bill to be laid
before each
member.

133. No member, locally or otherwise interested, of a committee on any unopposed private bill shall have a vote on any question that may arise, but every such member shall be entitled to attend and take part in the proceedings of the committee.

Local member
not to vote.

134. The names of the members attending each committee shall be entered by the clerk on the minutes of the committee: and if any division shall take place in the committee, the clerk

Names of mem-
bers to be en-
tered on minutes.

STANDING ORDERS.	shall take down the names of members voting in any such division, distinguishing on which side of the question they respectively vote, and that such lists be given in with the report of the House.
Committee on bill not to inquire into certain standing orders.	135. No committee shall have power to examine into the compliance or non-compliance with such standing orders as are directed to be proved before the examiner of petitions for private bills, unless by special order of the House.
Committee may admit affidavits in proof of compliance with standing orders.	136. The committee on any private bill may admit affidavits in proof of the compliance with such standing orders of the House as are directed to be proved before them, unless in any case they shall require further evidence; and such affidavits shall be sworn, if in <i>England</i> , before a justice of the peace; if in <i>Scotland</i> , before any sheriff-depute or his substitute; and if in <i>Ireland</i> , before any judge or assistant barrister of that part of the United Kingdom, or before a justice of the peace.
Consents, how to be proved.	137. The committee may admit proof of the consents (a) of parties concerned in interest in any private bill, by affidavits sworn as aforesaid, or by the certificate in writing of such parties, whose signatures to such certificate shall be proved by one or more witnesses, unless the committee shall require further evidence. (a) See L. S. O. cxlviii.
Clause compelling payment of subscriptions.	138. In all bills presented to the House for carrying on any work by means of a company, commissioners or trustees, provision shall be made for compelling persons who have subscribed any money towards carrying any such work into execution, to make payment of the sums severally subscribed by them.
Provision to be made in bills by which tolls, &c., are to be levied.	139. In all bills whereby any parties are authorised to levy fees, tolls, or other rate or charge, clauses shall be inserted, providing for the following objects, except in so far as any of such objects shall have been provided for in some general act, applicable to the subject-matter of the bill :—
Security to be taken from treasurer, &c	Security to be taken from the treasurer, collector, or receiver, and every other officer intrusted with the collection or custody of moneys under the bill, for the faithful execution of his office.
Accounts to be kept.	Full and accurate accounts to be kept of all moneys received and expended under the provisions of the bill, and that such accounts be balanced once in each year at the least.
Accounts to be audited.	Such accounts to be duly audited once in each year at the least, and that for such purpose an auditor or auditors be appointed by some person or persons not immediately

connected with the commissioners, directors, trustees, or other party, by whom, or by whose direction or authority, such fees, tolls, rates or charges shall be levied.

STANDING
ORDERS.

For the purpose of auditing such accounts, the commissioners, directors, trustees or other such party as aforesaid, to be required to cause the accounts, together with all their books and vouchers, to be produced to the auditors.

Accounts, vouchers, &c., to be produced to auditors.

The remuneration of the auditor, and his expenses, to be defrayed out of the funds levied under the bill.

Remuneration to auditors.

An annual account, in abstract, to be prepared of the total receipts and expenditure of all funds levied under such bill for the past year, under the several distinct heads of receipts and expenditure, with a statement of the balance of the said account duly audited and certified by the chairman of the commissioners, directors, trustees or other parties aforesaid, and also by the auditors thereof; and a copy of such annual account to be transmitted, free of charge, to the clerk of the peace (or in *Scotland* to the sheriff-clerk) for the county, or to the clerk of the city or to the clerk of the city or borough within which the chief office for the management of such funds shall be situated, on or before the thirty-first day of January in each year, under a sufficient penalty for not preparing and sending in the said account, to be levied by summary process; the said account to be open at all seasonable hours to the inspection of the public upon payment of a fee.

Abstract of account to be annually transmitted to clerk of peace.

140. Where the level of any road shall be altered in making any public work, the ascent of any turnpike road, or of any road in *Ireland* so defined in the Railway Clauses Consolidation Act, 1845, shall not be more than one foot in 30 feet, and of any other public carriage road not more than one foot in 20 feet; and a good and sufficient fence, of four feet high at the least, shall be made on each side of every bridge which shall be erected: (L. S. O. clxxxix. 2.)

Level of roads.

Fence to bridge.

141. Every plan, and book of reference thereto, which shall be produced in evidence before the committee upon any private bill, (whether the same shall have been previously lodged in the Private Bill Office or not,) shall be signed by the chairman of such committee, with his name at length; and he shall also mark with the initials of his name every alteration of such plan and book of reference which shall be agreed upon by the said committee; and every such plan and book of reference shall thereafter be deposited in the Private Bill Office.

Plan, &c., to be signed by chairman.

142. The chairman of the committee shall sign, with his name at length, a printed copy of the bill (to be called the com-

Committee bill and clauses to

STANDING
ORDERS.
be signed by
chairman.
Chairman to
report on allega-
tions of bill, &c.

mittee bill,) on which the amendments are to be fairly written; and also sign, with the initials of his name, the several clauses added in the committee.

143. The chairman of the committee shall report to the House, that the allegations of the bill have been examined; and whether the parties concerned have given their consent (where such consent is required by the standing orders) to the satisfaction of the committee.

Chairman to re-
port bill in all
cases.

144. The chairman of the committee shall report the bill to the House, whether the committee shall or shall not have agreed to the preamble, or gone through the several clauses, or any of them; or where the parties shall have acquainted the committee that it is not their intention to proceed with the bill; and when any alteration shall have been made in the preamble of the bill, such alteration, together with the ground of making it, shall be specially stated in the report.

Committee to
notice recom-
mendation from
Government de-
partments when
referred.

145. Whenever a recommendation shall have been made in a report on a private bill from a department of the Government referred to the committee, the committee shall notice such recommendation in their report, and shall state their reasons for dissenting should such recommendation not be agreed to.

Minutes of com-
mittee.

146. The minutes of the committee on every private bill shall be brought up and laid on the table of the House, with the report of the bill.

Railway Bills.

Restrictions as
to mortgage.

147. In the case of a railway bill, no company shall be authorised to raise, by loan or mortgage, a larger sum than one-third of their capital; and until fifty per cent. on the whole of the capital shall have been paid up, it shall not be in the power of the company to raise any money by loan or mortgage.

Limiting ascent
of roads where
level is altered.

148. Where the level of any road shall be altered in making any railway, the ascent of any turnpike road, or of any road in Ireland, so defined in the Railway Clauses Consolidation Act, 1845, shall not be more than one foot in 30 feet, and of any other public carriage road not more than one foot in 20 feet, unless a report thereupon from some officer of the Board of Trade shall be laid before the committee on the bill, and unless the committee, after considering such report, if they shall disagree with the said report, shall recommend steeper ascents, with the reasons and facts upon which their opinion is founded.

Fence to bridge

Also, a good and sufficient fence, of four feet high at the least, shall be made on each side of every bridge which shall be erected.

Matters to be specially reported to Committee. cclvii

149. No railway whereon carriages are propelled by steam, or by atmospheric agency, or drawn by ropes in connexion with a stationary steam-engine, shall be made across any turnpike road or other public carriage-way on the level, unless a report thereupon from some officer of the Board of Trade shall be laid before the committee on the bill, and unless the committee, after considering such report, if they shall disagree with the said report, shall recommend such level crossing, with the reasons and facts upon which their opinion is founded; and in every clause authorising a level crossing, the number of lines of rails authorised to be made at such crossing shall be specified: (L. S. O. clxxxix. 3.)

STANDING ORDERS.

Railways not to cross roads on a level unless committee report, &c.

150. No railway company shall be authorised to construct or enlarge, purchase or take on lease, or otherwise appropriate any dock, pier, harbour or ferry, or to acquire and use any steam-vessels for the conveyance of goods and passengers, or to apply any portion of their capital or revenue to other objects, (a) distinct from the undertaking of a railway company, unless the committee on the bill report that such a restriction ought not to be enforced, with the reasons and facts upon which their opinion is founded.

Railway company not to acquire docks, &c., unless committee report, &c.

(a) See ss. 65 and 90 of the Companies Clauses Act, 1845, *ante*.

151. The committees on railway bills shall direct their attention especially to the following heads of the inquiry, and shall require evidence from the promoters thereon, namely:—

Matters to be specially reported.

1. The financial arrangements made or proposed by the company formed for the execution of the railway; the number and amount of shares actually subscribed for or agreed to be taken; and the amount of share capital and of loans proposed to be authorised.

Capital.

2. The crossings, if any, of public roads on the level.

Crossings of public roads.

3. The degree of favour or objection with which the project is regarded by the landowners and others in the neighbourhood of the proposed railway.

Views of landowners and others.

Every committee on a railway bill shall report specially to the House,—

Whether any report from any public department in regard to the bill, or the objects thereof, has been referred by the House to the committee; and, if so, in what manner the several recommendations contained in such report have been dealt with by the committee:—

Reports of public departments.

Whether it be intended that the railway shall cross on a level and turnpike road or highway:—

Crossing highways on a level

And any other circumstances which, in the opinion of

Other circumstances.

STANDING
ORDERS.

Clauses to be inserted in railway bills imposing penalty unless line be opened.

the committee, it is desirable that the House should be informed of.

152. In every railway bill, whereby the construction of any new line of railway is authorised, or the time for completing any line already authorised is extended, promoted by an existing railway company which is possessed of a railway already opened for public traffic, and which has, during the year last past, paid dividends on its ordinary share capital, and which does not propose to raise under the bill a capital greater than its existing authorised capital, there shall be inserted a clause to the following effect, viz. :

(A.) If the company fail within the period limited by this act to complete the railway authorised to be made by this act, the company shall be liable to a penalty of £50 a day for every day after the expiration of the period so limited until the said railway is completed and opened for public traffic, or until the sum received in respect of such penalty shall amount to five per cent. on the estimated cost of the works ; and the said penalty may be applied for by any landowner or other person claiming to be compensated in accordance with the provisions of the next following section of this act, and in the same manner as the penalty provided in the 3d section of this act, 17 & 18 Vict. c. 31, known as " The Railway and Canal Traffic Act, 1854," (a) and every sum of money recovered by way of such penalty as aforesaid shall be paid under the warrant or order of such court or judge as is specified in the said 3d section of the act 17 & 18 Vict. c. 31, to an account opened or to be opened in the name and with the privity of the Accountant-General of the Court of Chancery in *England* [the Queen's Remembrancer of the Court of Exchequer in *Scotland*, or the Accountant-General of the Court of Chancery in *Ireland* (according as the railway is situate in *England*, *Scotland*, or *Ireland*)] in the bank named in such order, and shall not be paid thereout as herein-after provided ; but no penalty shall accrue in respect of any time during which it shall appear, by a certificate to be obtained from the Board of Trade, that the company was prevented from completing or opening such line by unforeseen accident or circumstances beyond their control : Provided, That the want of sufficient funds shall not be held to be a circumstance beyond their control.

(a) See this act in the Appendix, *ante*, p. cix.

Clause to be inserted providing that deposit be impounded as security for completion of the line.

In every railway bill whereby the construction of any new line is authorised, or the time for completing any line already authorised is extended ; if such bill be promoted by any existing railway company which is not possessed of a railway already opened for public traffic, or which has not during the year last

past paid dividends on its ordinary share capital ; or by an existing railway company when the capital to be raised under the bill is greater than the existing authorised capital of the company, or by persons not already incorporated, there shall be inserted a clause to the following effect, viz. :

(B.) Whereas, pursuant to the standing orders of both Houses of Parliament, and to an act of the ninth and tenth years of her present Majesty, c. 20 (a) a sum of £ being five per cent. upon the amount of the estimate in respect of the railway authorised by this act, has been deposited with the Court of Chancery in *England* [or with the Court of Exchequer in *Scotland*, or the Court of Chancery in *Ireland*, as the case may be], [or Exchequer bills, stocks, or funds to the amount of £ have been deposited or transferred, pursuant to the said Act, as the case may be], in respect to the application to Parliament for this act: Be it enacted, That notwithstanding anything contained in the said recited act, the same sum of £ [or the said Exchequer bills, or other funds as the case may be] so deposited [or transferred] as aforesaid, in respect of the application for this act shall not be paid or transferred to or on the application of the person or persons, or the majority of the persons named in the warrant or order issued in pursuance of the said act, or the survivors or survivor of them, unless the said company shall, previously to the expiration of the period limited by this act for completion of the railway hereby authorised to be made [or the time for completing which is hereby extended], either open the said railway for the public conveyance of passengers, or prove to the satisfaction of the Lords of the Committee of Her Majesty's Privy Council for Trade and Foreign Plantations that the said company have paid up one-half of the amount of the capital by this act authorised to be raised by means of shares, and have expended for the purposes of this act a sum equal in amount to such one-half of the said capital ; and if the said period shall expire before the said company shall either have opened the said railway for the public conveyance of passengers, or have given such proof as aforesaid to the satisfaction of the Lords of the said Committee, the said sum of money [Exchequer bills, stocks, or funds] deposited [or transferred] as aforesaid shall be applied in the manner hereinafter specified ; and the certificate of the lords of the said committee that such proof has been given to their satisfaction as aforesaid, shall be sufficient evidence of the fact so certified ; and it shall not be necessary to produce any certificate of this act having passed, anything in the said recited act to the contrary notwithstanding.

(a) See this act in the Appendix, *ante*.

STANDING
ORDERS.

Clause to be inserted providing application of deposit or penalty in compensation to parties injured.

In every railway bill whereby the construction of any new line of railway is authorised, or the time for completing any line already authorised is extended, the following clauses shall be inserted, in the order in which they are here placed, immediately after that one of the two last preceding clauses which shall have been inserted in the bill, viz. :—

(C.) The said sum of money [Exchequer bills, stocks, or funds] deposited [or transferred] as aforesaid, [or, every sum of money so recovered by way of penalty, as aforesaid], shall be applicable, and, after due notice in the *London Gazette*, [or *Edinburgh* or *Dublin Gazette*, as the case may require,] shall be applied towards compensating any landowners or other persons whose property may have been interfered with, or otherwise rendered less valuable, by the commencement, construction, or abandonment of the said railway, or any portion thereof, or who may have been subjected to injury or loss in consequence of the compulsory powers of taking property conferred upon the company by this act, and for which injury or loss no compensation or inadequate compensation shall have been paid, and shall be distributed in satisfaction of such compensation as aforesaid, in such manner and in such proportions as to the Court of Chancery in *England* [or Court of Exchequer in *Scotland*, or Court of Chancery in *Ireland*, as the case may be] may seem fit; and if no such compensation shall be payable, or if a portion of the said sum of money [Exchequer bills, stocks, or funds] [or of the sum or sums of money so recovered by way of penalty as aforesaid] shall have been found sufficient to satisfy all just claims in respect of such compensation, then the said sum of money [Exchequer bills, stocks, or funds] [or the said sum or sums of money recovered by way of penalty], or such portion thereof as may not be required as aforesaid, shall be paid [or transferred] to or on the application of the person or persons, or the majority of the persons named in such warrant or order as aforesaid, or the survivor or survivors of them [or the company from whom such penalty was recovered]: Provided, That until the said sum of money [Exchequer bills, stocks, or funds] shall have been repaid to the depositors, or shall have become otherwise applicable as hereinbefore mentioned, any interest or dividends accruing thereon shall from time to time, and as often as the same shall become payable, be paid to or on the application of the person or persons or the majority of the persons named in such warrant or order as aforesaid, or the survivors or survivor of them.

N.B.—If the clause lettered (A) is inserted in the bill, the proviso at the end of the clause lettered (C) shall be omitted.

(D.) If the railway authorised by this act shall not be com-

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pleted within the period limited by this act [such period not to exceed five years in the case of a new line, and three years in the case of the extension of time for completing any line], then, on the expiration of such period, the powers by this act granted to the company for making and completing the said railway, or otherwise in relation thereto, shall cease to be exercised, except as to so much thereof as shall then be completed (a).

STANDING
ORDERS.

Completion of
line.

(a) But see the notes to s. 123 of the Lands Clauses Act, 1845, *ante*, p. 287 *et seq.*; L. S. O. clxxxix. 1.

In any railway bill to which the preceding provisions are not applicable, the committee on the bill shall make such other provision as they shall deem necessary for ensuring the completion of the line of railway: (L. S. O. clxxxiv. 3-6.)

Where preceding
provisions are
inapplicable.

153. The committee on every railway bill shall fix the tolls, and shall determine the maximum rates of charge for the conveyance of passengers, with a due amount of luggage and of goods on such railway, and such rates of charge shall include the tolls and the costs of locomotive power, and every other expense connected with the conveyance of passengers, with a due amount of luggage and of goods upon such railway (a); but if the committee shall not deem it expedient to determine such maximum rates of charge, a special report, explanatory of the grounds of their omitting so to do, shall be made to the House, which special report shall accompany the report of the bill.

Committee to fix
the tolls and
charges.

(a) See ss. 86, 89, and 90 of the Railways Clauses Act, 1845, *ante*.

154. In every railway bill by which it is proposed to authorise the company to grant any preference (a) or priority in the payment of interest or dividends on any shares or stock, there shall be inserted a clause providing that the granting of such preference or priority shall not prejudice or affect any preference or priority in the payment of, interest or dividends on any other shares or stock which shall have been granted by the company in pursuance of or which may have been confirmed by any previous act of Parliament, or which may otherwise be lawfully subsisting, unless the committee on the bill shall report that such provision ought not to be required, with the reasons on which their opinion is founded.

In bills granting
preference in
payment of in-
terest, &c., pro-
vision to be made
that the same
shall not preju-
dice former
grants of prefer-
ence, unless
committee report
otherwise.

(a) See as to preference shares and stock, *ante*, p. 109 *et seq.*

155. No railway company shall be authorised to alter the terms of any preference or priority of interest or dividend which shall have been granted by such company in pursuance of or which may have been confirmed by any previous act of Parliament, or which may otherwise be lawfully subsisting, unless the

Company not to
alter any prefer-
ence previously
granted.

STANDING
ORDERS.

No powers of
purchase, &c., in
bills for construc-
tion of a railway.

No powers of
purchasing, &c.,
steam vessels in
railway bills.

No powers of
purchase, &c. to
be given, except
after proof of cer-
tain matters be-
fore Board of
Trade, &c.

Railway company
not to guarantee
interest or
dividend before
completion of
line.

Limitation of
capital on amal-
gamation of
companies,

committee on the bill shall report that such alteration ought to be allowed, with the reasons on which their opinion is founded, together with the number of preference shareholders who have assented to or dissented from such alteration.

156. No powers of purchase, sale, lease or amalgamation shall be contained in any bill for the construction of a railway: (L. S. O. clxxxix. 8.)

157. No powers of purchasing, hiring, or providing steam vessels shall be contained in a bill by which any other powers are sought to be obtained by a railway company, except when the transit by such steam vessels is required to connect portions of railway belonging to or proposed to be constructed by such company.

158. No powers of purchase, sale, lease or amalgamation shall be given to any railway company, with reference to any other undertaking already authorised by any act or acts, nor to any other incorporated company, with reference to any railway, unless, previously to the application to Parliament for such purpose, the several companies who may be parties to such purchase, sale, lease, or amalgamation, shall have proved to the satisfaction of the Board of Trade that they have respectively paid up one-half of the capital authorised to be raised by any previous act or acts by means of shares, and have expended for the purposes of such act or acts a sum equal thereto; and in case such powers shall be applied for in respect of works intended to be authorised by any bill or bills of the same session, it shall be proved to the satisfaction of the Board of Trade that such companies have respectively paid up one-half the amount of their capital, and that the company proposed to be empowered to construct such works have included in such amount the capital proposed to be authorised by such bill or bills; and that no such powers shall be given in respect of works intended to be authorised by any act or acts for which it is intended to apply in any subsequent session: (L. S. O. clxxxix. 9.)

159. No railway company shall be authorised, except for the execution of its original line or lines sanctioned by act of Parliament, to guarantee interest on any shares which it may issue for creating additional capital, or to guarantee any rent or dividend to any other railway company, until such first-mentioned company shall have completed and opened for traffic such original lines (a): (L. S. O. clxxxix. 11.)

(a) But see the cases cited in p. 108 *ante*, on this subject.

160. In bills for the amalgamation (a) of railway companies the amount of capital created by such amalgamation shall in

Purchase of another Line—Election of Directors. cclxiii

no case exceed the sum of the capitals of the companies so amalgamated: (L. S. O. clxxxix. 12.)

STANDING
ORDERS.

(a) See as to amalgamation, Part V. of the Railways Clauses Act, 1863, in the text, *ante*.

161. In bills for empowering any railway company to purchase any other railway, no addition shall be authorised to be made to the capital of the purchasing company, beyond the amount of the capital of the railway purchased; and in case such railway shall be purchased at a premium, no addition on account of such premium shall be made to the capital of the purchasing company: (L. S. O. clxxxix. 13.)

Additional capital of purchasing company not to amount to more than capital of company purchased.

162. A clause shall be inserted in every railway bill, prohibiting the payment of any interest or dividend in respect of calls under such bill (except the interest, by way of discount on subscriptions prepaid, agreeably to 8 Vict. c. 16, s. 24 (a), out of any capital which they have been authorised to raise either by means of calls, or of any power of borrowing: (L. S. O. clxxxix. 5.)

Clause that no interest or dividends be paid on calls.

(a) *Ante*, text, p. 25.

163. A clause shall be inserted in every railway bill, prohibiting any railway company from paying, out of the capital which they have been authorised to raise for the purposes of any existing act (a), the deposits required by the standing orders to be made for the purposes of any application to Parliament for a bill for the construction of another railway: (L. S. O. clxxxix. 6.)

Clause as to deposits not to be paid out of capital.

(a) See the notes to s. 65 of the Companies Clauses Act, 1845, *ante*, p. 60 *et seq.*

164. The following clause shall be inserted in all railway bills passing through this House:—

Clause as to railway not to be exempt from any general act.

And be it further enacted, that nothing herein contained shall be deemed or construed to exempt the railway by this or the said recited acts authorised to be made from the provisions of any general act relating to railways now in force, or which may hereafter pass during this or any future session of Parliament, or from any future revision and alteration, under the authority of Parliament, of the maximum rates of fares and charges authorised by this act [or by the said recited acts.]

Some further standing orders of the House of Lords should be here noticed:—

4. That in every railway bill there be inserted a clause to enact, "That the directors appointed by this act shall continue in office until the first ordinary meeting to be held after the passing of the act, and at such meeting the shareholders present,

Election of directors in railway companies.

STANDING
ORDERS.Restrictions as
to mortgage in
railway bills.

personally or by proxy, may either continue in office the directors appointed by this act, or any number of them, or may elect a new body of directors, or directors to supply the places of those not continued in office, the directors appointed by this act being eligible as members of such new body."

7. That in the case of a railway bill no company shall be authorised to raise, by loan or mortgage, a larger sum than one-third of their capital; and that until fifty *per cent.* on the whole of the capital shall have been paid up it shall not be in the power of the company to raise any money by loan or mortgage.

10. That when by any bill powers are applied for to amalgamate with any other company, or to sell or lease the undertaking, or to purchase or take on lease the undertaking of any other company, or to enter into traffic arrangements, the company, person or persons, with, to, from, or by whom, and the terms and conditions on which it is proposed that such amalgamation, sale, purchase, lease, or traffic arrangements shall be made, shall be specified in the bill as introduced into Parliament.

*Agreements.*Agreement to be
annexed to bill.

165. Where it is sought by any bill to give Parliamentary sanction to any agreement, such agreement shall be annexed to the bill as a schedule thereto, and shall be printed in *extenso* therewith (a).

(a) See p. 333, *ante*.

V.—THE ORDERS REGULATING THE PRACTICE OF THE HOUSE
WITH REGARD TO PRIVATE BILLS.Petition for bill,
and how to be
signed.

179. No private bill shall be brought into this House, but upon a petition first presented, which shall have been duly deposited in the Private Bill Office, and indorsed by one of the examiners, with a printed copy of the proposed bill annexed: And such petition shall be signed by the parties, or some of them, who are suitors for the bill.

Petitions, when
to be presented.

180. All petitions for private bills shall be presented to the House not later than three clear days after the same shall have been indorsed by the examiner, or if, when the same is indorsed, the House shall not be sitting, then not later than three clear days after the first sitting thereof subsequent to such indorsement; and if the House shall not be sitting on the latest day on which any petition ought to be presented, then the same shall be presented on the first day on which the House shall again sit.

How private bills
to be presented.

181. All private bills which have been ordered to be brought

in shall be presented to the House by depositing the same in the Private Bill Office, and shall be laid, by one of the clerks of that office, on the table of the House for first reading, together with a list of such bills.

STANDING
ORDERS.

182. No private bill shall be read a first time unless it be presented not later than one clear day after the presentation of the petition for leave to bring in the same; or where the petition has been referred to the Select Committee on Standing Orders, then not later than one clear day after the House shall have given leave to the parties to proceed with the bill.

Bill, when to be
presented.

183. No petition for additional provision in any private bill will be received by this House, unless a printed copy of the proposed clauses be annexed thereto.

Petition for addi-
tional provision.

184. All petitions for additional provision in private bills, with the proposed clauses annexed, and all estate bills brought from the House of Lords, and all bills introduced by leave of the House, in lieu of other bills which shall have been withdrawn, after having been read a first time, shall be referred to the examiner of petitions for private bills.

Petitions for
additional provi-
sion and estate
bills from Lords,
&c., to be referred
to examiner of
petitions.

185. Whenever any private bill which, in pursuance of any report from the chairman of the Committee of Ways and Means under standing order 82, has originated in the House of Lords, shall have been brought from the House of Lords, such bill, after having been read a first time, shall be referred to the examiner of petitions for private bills, before whom the compliance with such standing orders as shall not have been previously inquired into shall be proved.

Bills from Lords
to be referred to
examiner.

186. All reports of the examiner of petitions for private bills, in which he shall report that the standing orders have not been complied with, and all special reports of the said examiner, shall be referred to the Select Committee on Standing Orders: (L. S. O. clxxvii. 3, 4.)

Reports of ex-
aminer to be
referred to Com-
mittee on Stand-
ing Orders.

187. All petitions praying that any of the sessional or standing orders of the House relating to private bills may be dispensed with, and all petitions for the reinsertion of petitions for private bills in the general list of petitions, and all petitions opposing the same, shall be presented to this House by depositing the same in the Private Bill Office; and every such petition, so deposited, shall stand referred to the Select Committee on Standing Orders: (L. S. O. clxxvii. 3, 5.)

Petitions for dis-
pensation, &c., to
be referred to
Committee on
Standing Orders.

188. Every private bill, printed on paper of a size to be determined upon by Mr Speaker, shall be presented to the House, with a cover of parchment attached to it, upon which the title of the bill is to be written; and the short title of the bill, as first entered on the votes, shall correspond with that at the head of the advertisement.

Printed bill to be
presented.

STANDING
ORDERS.

Rates, tolls, and other matters to be inserted in *italics*.

What bills to be printed, and when.

Time between first and second reading.

Petition relating to bills to be presented to House by being deposited in the Private Bill Office, and name of bill to be endorsed on every petition.

Petitioner or memorialists may withdraw petition or memorial.

When second or third reading opposed to be postponed.

Bills to stand referred to committees of selection, general committee, and divorce.

When unopposed bill is to be treated as opposed, to be again referred to committee of selection or general committee.

189. The proposed amount of all rates, tolls, and other matters heretofore left blank in any private bill, when presented to the House, shall be inserted in *italics* in the printed bill annexed to the petition.

190. Every private bill (except name bills) shall be printed; and printed copies thereof delivered to the doorkeepers for the use of the members before the first reading.

191. There shall not be less than *three* clear *days*, nor more than *seven*, between the first and second reading of any private bill, unless any such bill have been referred to the examiners of petitions for private bills, in which case the bill shall not be read a second time later than *seven* clear *days* after the report of the examiner, or of the Select Committee on Standing Orders, as the case may be.

192. Every petition in favour of or against any private bill before the House, or otherwise relating thereto (not being a petition for additional provision), shall be presented to this House, by depositing the same in the Private Bill Office, and there shall be indorsed thereon the name or short title by which such bill is entered in the votes, and a statement that such petition is in favour of or against the bill, or otherwise, as the case may be, together with the name of the member, party, or agent depositing the same.

193. Any petitioner or memorialist may withdraw his petition or memorial, on a requisition to that effect being deposited in the Private Bill Office, signed by him or by the agent who deposited such petition or memorial; and where any such petition or memorial is signed by more than one person, any person signing such petition or memorial may withdraw his opposition by a similar requisition, signed and deposited as aforesaid.

194. In cases where the second or third reading of a private bill, or the consideration of a bill as amended by the committee, or any proposed clause or amendment, is opposed, the same shall be postponed until the day on which the House shall next sit.

195. Every private bill, not being a railway, canal, or divorce bill, after having been read a second time and committed, shall stand referred to the Committee of Selection; and if a railway or canal bill, to the General Committee on Railway and Canal Bills; and if a divorce bill, to the Select Committee on Divorce Bills.

196. When the House shall have been informed by the Chairman of Ways and Means, that in his opinion any unopposed private bill should be treated as an opposed bill, such bill shall be again referred to the Committee of Selection; or in the case of a railway or canal bill, to the General Committee on Railway and Canal Bills.

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197. Every petition against a private bill which shall have been deposited in the Private Bill Office not later than ten clear days after the first reading of such bill, or which shall have been otherwise deposited under the provisions of standing order 126, shall stand referred to the committee on such bill; and subject to the rules and orders of this House, such petitioners as shall have prayed to be heard, by themselves, their counsel or agents, shall be heard upon their petition accordingly, if they think fit, and counsel heard, in favour of the bill, against such petition.
198. There shall be eight clear days between the second reading of every private bill and the sitting of the committee thereupon, except in the case of name bills, naturalisation bills, and estate bills (not being bills relating to crown, church or corporation property, or property held in trust for public or charitable purposes) in respect of which there shall be three clear days between the second reading and the committee.
199. All reports made under the authority of any public department upon a private bill, or the objects thereof, laid before the House, shall stand referred to the committee on the bill; (L. S. O., clxxxix. 14.)
200. The report upon every private bill shall lie upon the table; and the bill, if amended in committee, or a railway bill, when reported, shall be ordered to lie upon the table; and every other bill, when reported, shall be ordered to be read a third time.
201. Every private bill, as amended in committee, shall be printed at the expense of the parties applying for the same, and delivered to the door-keepers for the use of the members, three clear days at least before the consideration of such bill.
202. In the case of private bills ordered to lie upon the table, three clear days shall intervene between the report and the consideration of the bill, and no consideration of any such bill shall take place, unless the chairman of the Committee of Ways and Means shall have informed the House, or signified in writing to Mr Speaker, whether the bill contain the several provisions required by the standing orders.
203. No clause or amendment shall be offered in the House on the consideration of any private bill ordered to lie upon the table, nor any verbal amendment on the third reading of any private bill, unless the chairman of the Committee of Ways and Means shall have informed the House, or signified in writing to Mr Speaker, whether in his opinion such clause or amendment be such as ought or ought not to be entertained by the House, without referring the same to the Select Committee on Standing Orders.

STANDING
ORDERS.

Petition against bill, if duly deposited in Private Bill Office, to stand referred to committee on bill, &c.

Time between second reading and committee.

Reports of departments to stand referred to committee on bill.

Report of bills.

Bill to be printed after report.

Time between report and consideration of bill, &c.

No clause or amendment on consideration of bill, or on third reading, to be offered, unless chairman of Ways and Means shall have informed the House, &c.

STANDING
ORDERS.

Clauses and amendments offered on consideration of bill, or verbal amendments on third reading, to be printed.

When referred, no further proceeding to be had until report of Select Committee on Standing Orders.

No amendments, except verbal, on third reading.
Lords' amendments to be printed and circulated with the votes prior to consideration, &c.

Bill to be printed fair after third reading.

Notice of committee to inspect Lords' journals to be given to committee clerks.

Bill not to proceed two stages on same day.
Notice to be given of motion for dispensation.

Order of proceedings in House on private business.

204. When any clause or amendment is offered on the consideration of any private bill ordered to lie upon the table, or any verbal amendment on the third reading of any private bill, such clause or amendment shall be printed: And when any clause is proposed to be amended, it shall be printed *in extenso*, with every addition or substitution in different type, and the omissions therefrom included in brackets and underlined. The expense of printing such clauses or amendments, when offered by a party promoting or opposing a bill, shall be paid by such party.

205. When any clause or amendment on the consideration of any private bill ordered to lie upon the table, or any verbal amendment on the third reading of any private bill, shall have been referred to the Select Committee on Standing Orders, no further proceeding shall be had until the report of the said select committee shall have been brought up.

206. No amendments, not being merely verbal, shall be made to any private bill on the third reading.

207. All amendments, made by the House of Lords to any private bill shall be printed at the expense of the parties, and circulated with the votes, prior to such amendments being taken into consideration; and where any clause has been amended, it shall be printed *in extenso*, with every addition or substitution in different type, and the omissions therefrom included in brackets and underlined; and when any amendments are intended to be proposed to the Lords' amendments, such proposed amendments shall also be printed in like manner.

208. Every private bill, after (a) it has been read a third time, shall be printed fair, at the expense of the parties applying for the same.

(a) Previously to the third reading in the House of Lords: (L. S. O. cxc. 1.)

209. In all cases where it is intended to appoint a committee to inspect the journals of the House of Lords with relation to any proceedings upon any private bill, previous notice thereof in writing shall be given by the agent to the clerks in the committee office.

210. No private bill shall pass through two stages on one and the same day without the special leave of the House.

211. Except in cases of urgent and pressing necessity, no motion shall be made to dispense with any sessional or standing order of the House without due notice thereof.

212. Each day, so soon as the House shall be ready to proceed to private business, the clerk at the table shall read from the private business list, and from the list of bills presented for

first reading, (see order 181,) the titles of the several bills set down therein, according to their precedence, as arranged under the following heads:—

STANDING
ORDERS.

1. Consideration of Lords' amendments.
2. Third reading.
3. Consideration of bills ordered to lie upon the table.
4. Second reading.
5. First reading.

and if upon the reading of each such title as aforesaid, no motion shall be made with respect to such private bill, the further proceedings thereon shall be adjourned until the next sitting of the House.

213. That this House will not insist on its privileges with regard to any clauses in private bills sent down from the House of Lords which refer to tolls and charges for services performed, and are not in the nature of a tax.

Tolls and charges
not in the nature
of a tax.

VI.—THE ORDERS REGULATING THE PRACTICE IN THE
PRIVATE BILL OFFICE.

214. A book, to be called "THE PRIVATE BILL REGISTER," shall be kept in a room, to be called "THE PRIVATE BILL OFFICE," in which book shall be entered by the clerks appointed for the business of that office, the name, description, and place of residence of the parliamentary agent in town, and of the agent in the country (if any) soliciting the bill; and all the proceedings, from the petition to the passing of the bill:—such entry to specify, briefly, each day's proceeding before the examiners of petitions respectively, or in the House, or in any committee to which the bill may be referred; the day and hour on which the examiner or the committee is appointed to sit; the day and hour to which the proceedings before such examiners or committee may be adjourned, and the name of the clerk attending the same. Such book to be open to public inspection daily, in the said office, between the hours of ten and six.

Private Bill
Office and
register.

215. The receipt of all documents required by the standing orders of the House to be deposited in the Private Bill Office, shall be acknowledged by one of the clerks of the said office, upon the said documents, when deposited.

Receipt of documents
to be acknowledged.

216. A list of all petitions for private bills shall be kept in the Private Bill Office in the order of their deposit, according to such regulations as shall have been made by Mr Speaker, which shall be called the "General List of Petitions," and each petition therein shall be numbered.

List of petitions
to be kept.

217. All memorials complaining of non-compliance with the

Memorials when
to be deposited.

STANDING
ORDERS.

standing orders, in reference to petitions for bills deposited in the Private Bill Office on or before the 23d December, shall be deposited as follows :

If the same relate to petitions for bills numbered in the General List of Petitions ;

From 1 to 100	} They shall be deposited {	Jan. 9th.
101 to 200		" 16th.
201 and upwards.		" 23d.

And in the case of any petitions for bills which may be deposited by leave of the House after the 23d December, such memorials shall be deposited three clear days before the day first appointed for the examination of the petition.

Deposit of memorials and copies thereof in Private Bill Office.

218. All memorials shall be deposited in the Private Bill Office before six of the clock in the evening of any day on which the House shall sit, and before two of the clock on any day on which the House shall not sit; and two copies of every such memorial shall be deposited for the use of the examiners before twelve of the clock on the following day.

Time for depositing memorials in certain cases, &c.

219. Every memorial complaining of non-compliance with the standing orders of the House in reference to petitions for additional provision in private bills, to estate bills brought from the House of Lords, and to bills introduced by leave of this House in lieu of other bills which shall have been withdrawn, and referred to the examiners of petitions for private bills, shall be deposited in the Private Bill Office, together with two copies thereof, before twelve o'clock on the day preceding that appointed for the examination of any such petition or bill by the examiner; and the examiner shall be at liberty to entertain such memorial, although the party (if any) who may be specially affected by the non-compliance with the standing orders shall not have signed the same.

Deposit of memorials complaining of non-compliance of standing order 185.

220. Every memorial complaining of non-compliance with the standing orders, in cases of bills referred to the examiner under standing order 185, shall be deposited in the Private Bill Office, together with two copies thereof, before twelve o'clock on the day preceding that appointed for the examination.

Notice to be given of examination of petitions, &c.

221. One of the examiners shall give at least seven clear days' notice in the Private Bill Office of the day appointed for the examination of each petition for a bill, and at least two clear days' notice in all cases of petitions for additional provision in private bills, of estate bills brought from the House of Lords, of bills introduced by leave of this House in lieu of other bills which shall have been withdrawn, and referred to the examiners, and of bills referred in pursuance of standing order 185.

Examination book.

222. After each private bill has been read the first time, its

Examination Book—Second Reading—Notices. cclxxi

name (or short title) shall be copied by the clerks of the Private Bill Office from the clerk's minute-book of the day, into a separate book, to be called "THE EXAMINATION BOOK;" wherein shall be noted the number of such bill, according to the priority of its being read, and the date of the day of such first reading.

STANDING
ORDERS.

223. Every private bill, after it has been read the first time and the title copied and examined for the votes, shall be in the custody of the clerks of the Private Bill Office, until laid upon the table for the second reading; and when committed, shall be taken by the proper committee clerk into his charge, till reported.

Custody of bills.

224. Between the first and second reading of every private bill, the bill shall, according to its priority, be examined, with all practicable despatch, by the clerks of the Private Bill Office, as to its conformity with the rules and standing orders of the House; and if not in due form, the examining clerk shall specify thereon the page in which any irregularity occurs, and shall enter the day of such examination, together with his own name, in the examination book.

Examination of
bills.

225. Three clear days' notice in writing shall be given by the agent for the bill, to the clerks in the Private Bill Office, of the day proposed for the second reading of every private bill; and no such notice shall be given until the day after that on which the bill has been ordered to be read a second time.

Notice of second
reading

226. Four clear days' notice shall be given by the clerk to the Committee of Selection, or by the clerk to the General Committee on Railway and Canal Bills, as the case may be, to the clerks in the Private Bill Office, of the day and hour appointed for the meeting of the committee on every private bill that shall have been referred to either of the said committees, except in the case of name bills, naturalisation bills, and estate bills, and except in the case of bills referred back to either of the said committees as unopposed:—and in the case of such name bills, naturalisation bills, and estate bills, there shall be one clear day's notice given of committee by the clerk to the Committee of Selection:—and in the case of bills not referred to the Committee of Selection, or to the General Committee on Railway and Canal Bills, four clear days' notice, and in the case of a re-committed bill, three clear days' notice, shall be given by the agents for the bill to the clerks in the Private Bill Office of the day and hour appointed for the meeting of the committee: and all the proceedings of any committee of which such notice shall not have been given shall be void.

Notice of
committee.

227. A filled-up bill, signed by the agent for the bill, as proposed to be submitted to the committee on the bill, and in the

Filled-up bill to
be deposited in

STANDING
ORDERS.Private Bill
Office.

case of a recommitted bill, a filled-up bill, as proposed to be submitted to the committee on recommitment, shall be deposited in the Private Bill Office two clear days before the meeting of the committee on every private bill; and a copy of the proposed amendments shall be furnished by the promoters to such parties petitioning against the bill as shall apply for it, one clear day before the meeting of the committee.

Notice of post-
ponement.

228. Notice in writing shall be given by the clerk to the Committee of Selection, or by the clerk to the General Committee on Railway and Canal Bills, as the case may be, to the clerks in the Private Bill Office, of the postponement of the first meeting of any committee on a private bill which shall have been referred either to the Committee of Selection, or to the General Committee on Railway and Canal Bills, on the day on which such postponement is made; and in the case of bills not referred to the Committee of Selection or the General Committee on Railway and Canal Bills, one clear day's notice shall be given by the agents for the bill, and, in the case of divorce bills, either by the agents or by the clerk to the Select Committee on Divorce Bills, to the clerks in the Private Bill Office, of such postponement.

Notice of
adjournment.

229. Notice in writing shall be given by the committee clerk to the clerks in the Private Bill Office of the day and hour to which each committee is adjourned.

Notice of con-
sideration of bill.

230. One clear day's notice, in writing, shall be given by the agent for the bill, to the clerks in the Private Bill Office, of the day proposed for the consideration of every private bill ordered to lie upon the table.

Bill as amended
in committee to
be delivered in.

231. The committee clerk, after the report is made out, shall deliver in to the Private Bill Office a printed copy of the bill, with the written amendments made in the committee; in which bill all the clauses added by the committee shall be regularly marked in those parts of the bill wherein they are to be inserted.

Bill printed as
amended, to be
examined.

232. Every private bill printed as amended in committee (see order 201) shall be examined by the clerks in the Private Bill Office, with the bill delivered in by the committee clerk, and the examining clerks shall endorse thereon a certificate of such examination.

Notice to be
given of clauses,
&c., on consider-
ation of bill, or
verbal amend-
ments on third
reading.

233. When it is intended to bring up any clause or to propose any amendment on the consideration of any private bill ordered to lie upon the table, or any verbal amendment on the third reading of any private bill, notice shall be given thereof, in the Private Bill Office, one clear day previous to such consideration or third reading.

Notice of third
reading.

234. One clear day's notice, in writing, shall be given by the

agent for the bill, to the clerks in the Private Bill Office, of the day proposed for the third reading of every private bill; and no such notice shall be given until the day after that on which the bill shall have been ordered to be read a third time.

STANDING
ORDERS.

235. The amendments (if any) which are made on the consideration of any private bill ordered to lie upon the table, and on the third reading of any private bill, and also such amendments made by the House of Lords as shall have been agreed to by this House, shall be entered by one of the clerks in the Private Bill Office, upon the printed copy of the bill as amended in committee; which clerk shall sign the said copy so amended, in order to its being deposited and preserved in the said office.

Amendments on
consideration of
bill and third
reading.

236. Every private bill, after it has been printed fair, (see 208.) shall, before the same is sent to the Lords, be examined by the clerks in the Private Bill Office with the bill as read a third time; and the examining clerks shall endorse thereon a certificate of such examination.

Private bills sent
to the Lords to
be endorsed with
certificate of
examination.

237. When amendments made by the House of Lords to any private bill are to be taken into consideration, one clear day's notice shall be given thereof in the Private Bill Office, and if any amendments be intended to be proposed thereto, a copy of such amendments shall also be deposited, and notice given thereof, one clear day previous to the same being proposed to be taken into consideration; and no such notice shall be given until the day after that on which such bill shall have been returned from the House of Lords.

Notice of con-
sideration of
Lords' amend-
ments.

238. All notices required to be given or deposits to be made in the Private Bill Office shall be delivered in the said office before six of the clock in the evening of any day on which the House shall sit, and before two of the clock on any day on which the House shall not sit; and after any day on which the House shall have adjourned beyond the following day, no notice shall be given for the first day on which it shall again sit.

Time for deliver-
ing notices.

239. The clerks in the Private Bill Office shall prepare daily lists of all private bills, and petitions for private bills, upon which any committee or examiner is appointed to sit; specifying the hour of meeting, and the room where the committee or examiner shall sit; and the same shall be hung up in the lobby of the House.

Daily lists of
committees
sitting.

240. Every plan, and book of reference thereto, which shall be certified by the Speaker of the House of Commons, in pursuance of any act of Parliament, shall previously be ascertained, and verified in such manner as shall be deemed most advisable by the Speaker, to be exactly conformable in all respects to the plan and book of reference which shall have been signed by the chairman of the committee upon the bill.

Plans to be ver-
ified as Mr
Speaker shall
direct.

APPENDIX (A.)

[Form referred to in No. 20.*]

No. _____

SIR,

We beg to inform you, that application is intended to be made to Parliament in the ensuing session for "an act," [*here insert the title of the act,*] and that the property mentioned in the annexed schedule, or some part thereof, in which we understand you are interested as therein stated, will be required for the purposes of the said undertaking, according to the line thereof as at present laid out, or may be required to be taken under the usual powers of deviation to the extent of _____ yards on either side of the said line which will be applied for in the said act.

We also beg to inform you, that a plan and section of the said undertaking, with a book of reference thereto, have been or will be deposited with the [several clerks of the peace, or principal sheriff-clerks, *as the case may be,*] of the counties of, [specify the counties in which the property is situate,] on or before the 30th of November, and that copies of so much of the said plan and section as relates to the [parish or extra-parochial place, *as the case may be,*] in which your property is situate, with a book of reference thereto, have been or will be deposited for public inspection with the [clerk of the said parish, clerk of the parish of _____ adjoining to such extra-parochial place, schoolmaster of the parish, session-clerk, town-clerk of the royal burgh, or the clerk of the union in which such parish is included, *as the case may be,*] on or before the 30th day of November, in which plan your property is designated by the numbers set forth in the annexed schedule.

As we are required to report to Parliament whether you assent to or dissent from the proposed undertaking, or whether you are neuter in respect thereto, you will oblige us by writing your answer of assent, dissent, or neutrality in the form left herewith, and returning the same to us with your signature on or before the _____ day of _____ next; and if there should be any error or mis-description in the annexed schedule, we shall feel obliged by your informing us thereof, at your earliest convenience, that we may correct the same without delay.

We are, Sir,

Your most obedient servants,

To

Note.—If the application be forwarded by post, the words "Parliamentary Notice" are to be printed or written on the cover.

* The same form is prescribed by the Lords' standing orders.

SCHEDULE referred to in the foregoing notice,* describing the Property therein alluded to.

	Parish, Township, Townland, or Extra-parochial place.	Number on Plans.	Description.	Owner.	Lessee.	Occupier.
Property on the line of the proposed work, or within the limits of the deviation intended to be applied for.						

* There is a slight difference between this form and that required by the House of Lords.

SCHEDULE referred to in the foregoing notice, describing the property therein alluded to, and the manner in which the line of the proposed work, as delineated upon the plan and section, will affect the same.

—	Parish, Township, Townland, or Extra-parochial Place.	Number on Plans.	Description.	Owner.	Lessee.	Occupier.	Description of the section of the line delineated showing the greatest height of embankment and depth of cutting where the property is intersected by the centre line of the proposed work.
Property in the line of the proposed work, as at present laid out, (including property any part of which is within eleven yards, or thereabouts, of the centre line of such proposed work, as delineated upon the plan.)							
—	Parish, Township, Townland, or Extra-parochial Place.	Number on Plans.	Description.	Owner.	Lessee.	Occupier.	
Property within the limits of the deviation intended to be applied for.							

Note.—Where the property is not intersected by the centre line, the description of the section is not given in the last column.

A TABLE OF THE FEES TO BE CHARGED AT THE HOUSE
OF COMMONS.

STANDING
ORDERS.

FEES TO BE PAID BY THE PROMOTERS OF A PRIVATE BILL.

On the deposit of the petition, bill, plan, or any other document in the Private Bill Office,	£	s.	d.
	5	0	0
For every day on which the examiners shall inquire into the compliance with the standing orders,	5	0	0

For proceedings in the House.

On the presentation of the petition for the bill,	5	0	0
On the first reading of the bill,	15	0	0
On the second reading of the bill,	15	0	0
On the report from the committee on the bill,	15	0	0
On the third reading of the bill,	15	0	0

Bills from the Lords, commonly called estate bills, divorce bills, naturalisation bills, and name bills, to be charge only one-half of the preceding fees.

The preceding fees on the petition, first, second, and third readings, and report, to be increased according to the money to be raised or expended under the authority of any bill for the execution of a work, in conformity with the following scale :—

If the sum be £100,000 and under £500,000, twice the amount of such fees.

If the sum be £500,000 and under £1,000,000, three times the amount of such fees.

If the sum be £1,000,000 and above, four times the amount of such fees.

For proceedings before any Committee or the Referees.

For every day on which the committee or the referees shall sit—	£	s.	d.
If the promoters of the bill appear by counsel,	10	0	0
If they appear without counsel,	5	0	0

FEES TO BE PAID BY THE OPPONENTS OF A PRIVATE BILL.

On the deposit of every memorial complaining that the standing orders have not been complied with,	£	s.	d.
	1	0	0
On the presentation or deposit of every petition against a private bill,	2	0	0

For proceedings before the Examiners, or before any Committee or the Referees.

For every day on which the examiners shall inquire into any memorial complaining of a non-compliance with the standing orders,	3	0	0
For every day on which the petitioners appear before any committee or the referees,	2	0	0

STANDING
ORDERS.

GENERAL FEES.

On every motion, order, or proceeding in the House upon a private bill, petition, or matter not otherwise charged, .	£ s. d.
For copies of all papers and documents, at the rate of seventy-two words in every folio—	1 8 0
If five folios or under,	0 2 6
If above five folios, per folio,	0 0 6
For the copy of a plan made by the parties,	1 0 0
For the inspection of a plan, or of any document,	0 5 0
For every plan or document certified by the Speaker pursuant to any act of Parliament,	10 0 0
For every day on which any party shall be heard by counsel at the bar, from each side,	10 0 0
For every day on which a committee of the whole House shall sit on a private bill or matter,	6 0 0
For serving any summons or order on a private bill or matter,	1 0 0
For riding charges, if on any private bill or matter, per mile,	0 1 0
For every order for the commitment or discharge of any person,	1 0 0
For taking any person into custody for a breach of privilege or contempt,	5 0 0
For taking any person into custody for any other cause,	2 0 0
For every day on which any person shall be in custody,	1 0 0
For riding charges, per mile,	0 0 6

FEES TO BE PAID ON THE TAXATION OF COSTS ON PRIVATE BILLS.

For every application or reference to "the taxing officer of the House of Commons," for the taxation of a bill of costs,	£ s. d.
For every £100 of any bill which shall be allowed by the taxing officer,	1 0 0
On the deposit of every memorial complaining of a report of the taxing officer,	1 0 0
For every certificate which shall be signed by the Speaker,	1 0 0
For copies of any documents in the office of the taxing officer, per folio of seventy-two words,	0 1 0

That the same fees be paid in case the Speaker shall refer to the taxing officer any bill of costs, under the authority of an act of the sixth year of his late Majesty King George the Fourth, "To establish a taxation of costs on private bills in the House of Commons."

That every bill for the particular interest or benefit of any person or persons, whether the same be brought in upon petition, or motion, or report from a committee, or brought from the Lords, hath been and ought to be deemed a private bill within the meaning of the table of fees.

FEES TO BE TAKEN BY THE SHORT-HAND WRITER.

For every day he shall attend,	£ s. d.
For the transcript of his notes, per folio of seventy-two words,	2 2 0
	0 0 0

The preceding fees shall be charged, paid, and received at such times, in such manner, and under such regulations, as the Speaker shall from time to time direct.

Mercurii, 27^o die Julii 1864.

Ordered, That the said table of fees be a standing order of this House.

RULES TO BE OBSERVED AS TO PROOF OF COMPLIANCE WITH THE STANDING ORDERS OF THE HOUSE OF LORDS PREVIOUS TO THE INTRODUCTION OF PRIVATE BILLS IN SESSION 1861.

STANDING
ORDERS.

The sittings of the examiners for standing orders will commence on the 18th January: (C. S. O. 73.)

The promoters of each bill will be required to prove compliance with the standing orders of both Houses of Parliament at the time appointed by the examiners, which can be ascertained at the Private Bill Office at the House of Commons.

The printed statements of proofs can be obtained at the Queen's printers.

Where lists are annexed to affidavits, the name of the agent is to be entered in the statement of proofs as delivering in such lists, followed by the names of the witnesses proving the service of notices or deposit of documents, as the case may be.

Memorials complaining of non-compliance with the standing orders (of either House), applicable previously to the introduction of private bills, must be deposited in the Private Bill Office, House of Commons, as follows:—

If the same relate to bills numbered in the general list published by the Private Bill Office of the House of Commons—

From 1 to 100	} They must be deposited before two o'clock on	Jan. 9.
„ 101 to 200		„ 16.
„ 201 and upwards		„ 23.

EXAMINER'S OFFICE,
6th August 1861.

TAXATION OF COSTS IN THE HOUSE OF LORDS.

Bills of costs relating to appeal cases, or to railway and other local and personal and private bills, &c., are taxed during the session, and on and after the third Monday in the month of November.

TAXING OFFICE, HOUSE OF LORDS.

*Form of Bye-Laws issued by the Board of Trade.
(December 1868.)*

BYE-LAWS AND REGULATIONS

Made by the Railway Company, with the approval of the Board of Trade, for regulating the travelling upon and using of all railways belonging to, or leased to, or under the control of the said company.

Obtaining ticket and delivering up the same.

No. 1. No passenger will be allowed to enter any carriage used on the railway, or to travel therein upon the railway, unless furnished by the company with a ticket specifying the class of carriage and the stations for conveyance between which such ticket is issued. Every passenger shall show and deliver up his ticket (whether a contract or season ticket, or otherwise) to any duly authorised servant of the company whenever required to do so for any purpose. Any passenger failing or refusing to show or deliver up his ticket as aforesaid shall be required to pay the fare from the station whence the train originally started to the end of his journey, and in default of payment thereof, is hereby subjected to a penalty not exceeding forty shillings.

Using ticket for any other day.

No. 2. Any passenger using or attempting to use a ticket on any day for which such ticket is not available, is hereby subjected to a penalty not exceeding forty shillings.

Using ticket for any other station.

No. 3. Any passenger using or attempting to use a ticket for any other station than that for which it is available will be required to pay the difference between the sum actually paid and the fare between the stations from and to which the passenger has travelled, and in default of such payment is hereby subjected to a penalty not exceeding forty shillings.

Defacing tickets.

No. 4. Any passenger wilfully altering or defacing his ticket so as to render the date, number, or any material portion thereof illegible, is hereby subjected to a penalty not exceeding forty shillings, and shall in addition be liable to pay the fare from the station whence the train originally started.

Tickets furnished when there is room.

No. 5. At the intermediate stations the fares will only be accepted and the tickets furnished, conditionally; that is to say, in case there shall be room in the train for which the tickets are furnished. In case there shall not be room for all the passengers to whom tickets have been furnished, those to whom tickets have been furnished for the longest distance shall (if reasonably practicable) have the preference; and those

to whom tickets have been furnished for the same distance shall (if reasonably practicable) have priority, according to the order in which tickets have been furnished, as denoted by the consecutive numbers stamped upon them. The company will not, however, hold itself responsible for such order of preference or priority being adhered to, and the fare will be immediately returned to any passenger for whom there is not room as aforesaid.

No. 6. Every person smoking tobacco in any building of the company, or in any carriage or compartment of a carriage not specially provided for that purpose, is hereby subjected to a penalty not exceeding forty shillings. The company's officers and servants are required to take the necessary steps to enforce obedience to this bye-law; and any person offending against it is liable, in addition to incurring the penalty above mentioned, to be summarily removed, at the first opportunity, from the carriage or from the company's premises. Smoking.

No. 7. Any person travelling without the permission of some duly authorised servant of the company in a carriage, or by a train of a superior class to that for which his ticket was issued, is hereby subjected to a penalty not exceeding forty shillings; and shall in addition be liable to pay the fare, according to the class of carriage in which he is travelling, from the station whence the train originally started. Using ticket for superior class.

No. 8. Any person found in a carriage, or elsewhere upon the company's premises, in a state of intoxication, using obscene or abusive language, or committing any nuisance, or otherwise wilfully interfering with the comfort of other passengers, is hereby subjected to a penalty not exceeding forty shillings, and shall immediately, or, if a passenger, at the first opportunity, be removed from the company's premises. Being intoxicated.

No. 9. Any person wilfully damaging or injuring the stations or other property of the company, or cutting the linings, or window straps, removing or defacing the number plates, breaking or scratching the windows, or otherwise wilfully damaging, injuring, or defacing any carriage used on the railway, is hereby subjected to a penalty not exceeding five pounds, in addition to the amount of any damage for which he may be liable. Damaging property.

No. 10. No passenger shall be permitted to travel on the roof, steps, or footboard of any carriage; and any person persisting in doing so, after being warned to desist by the guard in charge of the train, or any duly authorised servant of the company, is hereby subjected to a penalty not exceeding forty shillings. Travelling on steps or foot-board.

No. 11. Any passenger entering or leaving, or attempting to enter or leave, any of the carriages while the train is in motion, or elsewhere than at the side of the carriage adjoining the plat- Leaving, &c., carriage when in motion.

NOTICES.

Penalty for Fraud.

1. Under the 103d and 104th sections of the Railways Clauses Consolidation Act, 1845, it is provided that if any person travel or attempt to travel in any carriage of the company, or of any other company or party using the railway, without having previously paid his fare, and with intent to avoid payment thereof, or if any person, having paid his fare for a certain distance, knowingly and wilfully proceed in any such carriage beyond such distance without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof, or if any person knowingly and wilfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit such carriage, every person shall for every such offence forfeit to the company a sum not exceeding forty shillings; and if any person commit any such offence, all officers and servants, and other persons on behalf of the company, may lawfully apprehend and detain such person until he can conveniently be taken before some justice.

Obstructing Officers of the Company.

2. Under the 109th section of the Railways Clauses Consolidation Act, 1845, it is provided that if the infraction or non-observance of the company's bye-laws be attended with damage or annoyance to the public, or hindrance to the company in the lawful use of the railway, it shall be lawful for the company summarily to interfere to obviate or remove such danger, annoyance, or hindrance; and under the 16th section of the Act 3 & 4 Vict. cap. 97, it is provided that if any person shall wilfully obstruct or impede any officer or agent of the company in the execution of his duty upon the railway, or upon or in any of the stations or other works or premises connected therewith, every such person so offending, and all others aiding or assisting therein, may be seized and detained until he can conveniently be taken before a justice, and shall, in the discretion of such justice, forfeit any sum not exceeding five pounds, and in default of payment thereof be imprisoned for any term not exceeding two calendar months.

Injuring Notice Boards, &c.

3. Under the 144th section of the Railways Clauses Consolidation Act, 1845, it is provided that if any person pull down or injure any board put up or affixed for the purpose of publishing any bye-law or penalty, or shall obliterate any of the letters

or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Sending Dangerous Goods.

4. Under the 105th section of the Railways Clauses Consolidation Act, 1845, it is provided that no person shall be entitled to carry, or require the company to carry, upon the railway any aquafortis, oil of vitriol, gunpowder, lucifer matches, or any other goods which in the judgment of the company may be of a dangerous nature, and if any person send by the railway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the bookkeeper or other servant of the company with whom the same are left, at the time of so sending, he shall forfeit to the company twenty pounds for every such offence, and it shall be lawful for the company to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact.

Using Communication between Passengers and Servants of the Company.

5. Under the 22d section of the Regulation of Railways Act, 1868, it is provided that any passenger who makes use of the means of communication between the passengers and the servants of the company in charge of a train without reasonable and sufficient cause, shall be liable for each offence to a penalty not exceeding five pounds.

Trespassing on Railway.

6. Under the 23d section of the Regulation of Railways Act, 1868, it is provided that if any person shall be or pass upon the railway, except for the purpose of crossing the same at any authorised crossing, after having received warning by the company which works such railway, or by any of their agents or servants, not to go or pass thereon, every person so offending shall forfeit and pay any sum not exceeding forty shillings for every such offence.

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THE END.



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